

# EXHIBIT E

\* \* C O N F I D E N T I A L \* \*  
UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

-----x

JENNIFER FISCHMAN,

Plaintiff,

Index No.

-against-

18-cv-08188

MITSUBISHI CHEMICAL HOLDINGS AMERICA, INC.,  
MITSUBISHI CHEMICAL CORPORATION,  
MITSUBISHI CHEMICAL HOLDINGS CORPORATION,  
NICHOLAS OLIVA, in his individual and  
professional capacities; DONNA COSTA,  
in her individual and professional  
capacities; and JOHN DOES 1-10, in  
their individual and professional  
capacities,

Defendants.

-----x

55 Maple Avenue  
Rockville Centre, New York

July 12, 2021  
10:20 a.m.

DEPOSITION of DONNA COSTA, taken by  
the attorneys for the Plaintiff, pursuant to  
Notice, held before Bonnie Kreuzburg, a Notary  
Public of the State of New York, at the  
above-stated time and place.

1                   \* \* C O N F I D E N T I A L \* \*  
2           A P P E A R A N C E S:

3           VALLI KANE & VAGNINI LLP  
4           Attorneys for Plaintiff  
5                   600 Old Country Road, Suite 519  
6                   Garden City, New York 11530

7           BY:     MATTHEW L. BERMAN, ESQ.  
8                   ROBERT J. VALLI, JR., ESQ.

9           CLARICK GUERON REISBAUM LLP  
10          Attorneys for Defendant, Donna Costa  
11                   220 Fifth Avenue, 14th Floor  
12                   New York, New York 10001

13          BY:     NICOLE GUERON, ESQ.

14          GORDON REES SCULLY MANSUKHANI, LLP  
15          Attorneys for Defendants, Mitsubishi  
16                   Chemical Holdings America, Inc., Donna Costa and  
17                   Nicholas Oliva  
18                   One Battery Park Plaza, 28th Floor  
19                   New York, New York 10004

20          BY:     MERCEDES COLWIN, ESQ.  
21                   BRITTANY L. PRIMAVERA, ESQ.

22          SHEARMAN & STERLING, LLP  
23          Attorneys for Defendant  
24                   Mitsubishi Chemical Holdings Corporation  
25                   599 Lexington Avenue  
                  New York, New York 10222

          BY:     JEROME FORTINSKY, ESQ.

          ALSO PRESENT:

                  Jennifer Fischman

                  Matteo Traborelli, Intern

                  Skyler Stern, Intern

1                   \* \* C O N F I D E N T I A L \* \*

2                   MS. GUERON: So the only stips we're  
3                   agreeing to on the record are that all  
4                   objections, other than objections to form,  
5                   are reserved and that you are waiving  
6                   signing of the transcript, if you want?

7                   MR. VALLI: No, we're not.

8                   MS. GUERON: No. Okay.

9                   MR. VALLI: You want to read and sign.

10                  MR. BERMAN: Yes, please.

11       D O N N A   J O Y   C O S T A,

12                  called as a witness, having been first duly  
13                  sworn by the Notary Public (Bonnie  
14                  Kreuzburg), was examined and testified  
15                  under oath as follows:

16                  THE REPORTER: Please state your full  
17                  legal name for the record.

18                  THE WITNESS: Donna, D-O-N-N-A, Joy,  
19                  J-O-Y, Costa, C-O-S-T-A.

20       Q.       Business address, please?

21                  MS. GUERON: Why don't you just give  
22                  it as care of the law firm.

23       A.       Care of Gueron Reisbaum.

24       EXAMINATION BY

25       MR. BERMAN:

1 D. Costa - Confidential

2 Q. Good morning, Ms. Costa. My name is  
3 Matthew Berman. You've seen me before at the  
4 deposition of plaintiff, Jennifer Fischman. You  
5 understand that today I'll be asking you some  
6 questions which you'll be answering under oath,  
7 having sworn to tell the truth?

8 A. Yes.

9 Q. If you don't hear one of my questions,  
10 please let me know and I'll repeat it to make it a  
11 little more loud; is that okay?

12 A. Yes.

13 Q. If you don't understand one of my  
14 questions, please let me know and I'll do my best  
15 to rephrase it. If I ask a question that seems  
16 foolish, it's because you know more than I do, and  
17 part of my job is to find out what you know. So  
18 if you cannot answer a question because of the way  
19 I've framed it, could you please tell me that?

20 A. I'll try.

21 Q. Okay. Thank you.

22 So, we have a court reporter here  
23 today who is taking down what everyone in the room  
24 says, so it's important to give verbal responses  
25 today.

1 D. Costa - Confidential

2 Do you understand?

3 A. Yes.

4 Q. Okay. I will do my best not to  
5 interrupt you when you give a response to one of  
6 my questions, and if you could please wait until  
7 I've completed asking my question in full before  
8 you begin to answer. Because a lot of times  
9 people anticipate what each other will say, but  
10 since we have a transcript and we're trying to  
11 keep it clean, let's just try to do our best not  
12 to interrupt each other, okay?

13 A. Yes.

14 Q. From time to time, you may hear an  
15 objection from one of the attorneys. I'll still  
16 expect a response from you to the question, unless  
17 you're instructed not to answer, okay?

18 A. Yes.

19 Q. And you understand that, although  
20 we're in an informal setting today in a conference  
21 room, you're under oath just as if you were in a  
22 court of law, correct?

23 A. Yes.

24 Q. From time to time, someone may wish to  
25 take a break. I'm happy to afford any breaks that

1 D. Costa - Confidential

2 anyone wants. I'll probably take a number of them  
3 myself, but I will ask that you answer any pending  
4 question before we go on to a break. But at any  
5 time, please feel free to ask me, and we'll find  
6 an appropriate time to take a break, okay?

7 A. Yes.

8 Q. During my questioning today, the time  
9 period that I'm interested in is from 2014 to  
10 present, unless otherwise specified. So just can  
11 we keep that in mind as we go forward today?

12 A. Yes.

13 Q. Do you understand everything that  
14 we've just discussed, and do you have any  
15 questions for me about any of that?

16 A. I understand.

17 Q. Okay. Great.

18 So I have to ask some personal  
19 questions, just to set the ground here. Are you  
20 taking or refraining from taking any medication  
21 that could impact your ability to testify  
22 truthfully and accurately today?

23 A. No.

24 Q. Do you suffer from any medical  
25 condition which could affect your ability to

1 D. Costa - Confidential

2 testify truthfully and accurately today?

3 A. No.

4 Q. Do you suffer from any medical  
5 condition which impairs your memory?

6 A. No.

7 Q. Have you ever been deposed before,  
8 Ms. Costa?

9 A. No.

10 Q. Did you do anything to prepare for  
11 today's deposition?

12 A. Yes.

13 Q. At a high level, what did you do to  
14 prepare?

15 A. I met with my lawyers and I had phone  
16 calls with my lawyer.

17 Q. Okay. In the course of my questioning  
18 today, please keep in mind it's not my intention  
19 to ask you about the substance of any  
20 communications you've had with your attorneys,  
21 okay? So in responding to any question I pose to  
22 you, if you can answer it without revealing any  
23 substantive privileged communications with your  
24 counsel, please do so. If you're unable to do  
25 that, please let me know, okay?



1 D. Costa - Confidential

2 A. Yes.

3 Q. So you said you met with your  
4 attorneys?

5 A. Yes.

6 Q. How many times did you meet with your  
7 attorneys?

8 A. I had one meeting with Nicole,  
9 Brittany, Jerry and Mercedes. I had a separate  
10 meeting with Nicole, and I had some phone  
11 conversations with Nicole.

12 Q. Okay. When was your meeting with the  
13 group of attorneys that you just mentioned?

14 A. That was last Wednesday.

15 Q. When was your meeting with your  
16 counsel, Nicole?

17 A. Last Tuesday.

18 Q. And you said you had a number of phone  
19 calls?

20 A. I don't remember specifically when.

21 Q. Okay. Do you know approximately when  
22 those took place?

23 A. One prior to our first meeting last  
24 Tuesday, and then subsequent to the meeting on  
25 Wednesday.

1 D. Costa - Confidential

2 Q. In that first meeting that you  
3 described with your panoply of counsel,  
4 approximately how long did that meeting go for?

5 A. It started at 10:00. I believe we  
6 finished at 4:00 or 5:00.

7 Q. And your second meeting with your  
8 counsel, Nicole, how long was that for?

9 A. Less than three hours.

10 Q. Okay. Were you provided with any  
11 documents to review as part of your preparation?

12 A. No.

13 Q. Have you, on your own, viewed any  
14 documents in preparation for your deposition?

15 A. No.

16 Q. Have you ever been a witness in a  
17 lawsuit before?

18 A. Once, yes.

19 Q. How long ago was that?

20 A. At -- over ten years ago.

21 Q. What was the general subject matter of  
22 the suit?

23 A. I was a witness in a hearing regarding  
24 the disqualification of an attorney from  
25 litigation that Mitsubishi was involved in.

1 D. Costa - Confidential

2 Q. You attended the deposition of  
3 Ms. Fischman, correct?

4 A. Correct.

5 Q. Have you reviewed the transcript from  
6 that deposition?

7 A. No, I have not.

8 Q. Have you reviewed any of the exhibits  
9 from that deposition?

10 A. No, I have not.

11 Q. Have you reviewed any e-mails or other  
12 substantive materials in preparation for today's  
13 testimony?

14 A. No, I have not.

15 Q. Did you communicate with any other  
16 persons, besides your attorneys, in connection  
17 with today's deposition?

18 A. No, I have not.

19 Q. You are aware that you're a defendant  
20 in the litigation commenced by Ms. Fischman,  
21 correct?

22 A. Yes.

23 Q. And you're aware that it concerns your  
24 mutual tenure at Mitsubishi, correct?

25 A. Yes.

1 D. Costa - Confidential

2 Q. So, just to provide some additional  
3 clarity, my intention -- and for efficiency, my  
4 intention is to use a few acronyms today, and we  
5 may come up with more as we go. But, for now,  
6 when I use the acronym MCHA, will you please  
7 understand that I'm referring to Mitsubishi  
8 Chemical Holdings America?

9 A. Yes.

10 Q. And when I use the acronym MCHC, will  
11 you understand that I'm referring to Mitsubishi  
12 Chemical Holdings Corp.?

13 A. Yes.

14 Q. So, were you, at any time, an employee  
15 of Mitsubishi Chemical Holdings America --

16 A. Yes.

17 Q. -- MCHA?

18 A. I'm sorry.

19 Q. I'm sorry. I'm just trying to use the  
20 acronym the first time I use the full title.

21 Were you ever an employee of MCHA?

22 A. Yes.

23 Q. When did you first join the company?

24 A. I joined a predecessor company in  
25 February 1996.

1 D. Costa - Confidential

2 Q. What was the name of the predecessor?

3 A. Mitsubishi Chemical America, MCA.

4 Q. At some point, did the name of that  
5 entity change?

6 A. It changed to Mitsubishi Chemical USA,  
7 MCUS.

8 Q. At some point, did the name of MCUS  
9 change again?

10 A. Yes.

11 Q. What did it change to?

12 A. MCHA.

13 Q. And approximately when did that  
14 happen?

15 A. I don't recall exactly.

16 Q. So when you first joined Mitsubishi  
17 Chemical America, what was your position?

18 A. General counsel.

19 Q. How did you come to be employed as  
20 general counsel?

21 MS. GUERON: Objection.

22 You can answer.

23 A. I worked at Cleary Gottlieb Steen &  
24 Hamilton, which represented Mitsubishi Chemical  
25 when Mitsubishi Chemical decided to hire their

1 D. Costa - Confidential

2 first general counsel and start a legal  
3 department. I was put forward by Cleary Gottlieb  
4 as a candidate.

5 Q. So, do I understand correctly that  
6 Mitsubishi Chemical informed Cleary Gottlieb that  
7 they had an opening?

8 MS. GUERON: Objection.

9 A. I don't know what was exactly  
10 discussed.

11 Q. But you heard about the opening, or  
12 you learned of the opening through Cleary  
13 Gottlieb?

14 A. Correct.

15 Q. Did you apply for a position?

16 A. Technically, yes.

17 Q. Okay.

18 A. I was put forward by Cleary Gottlieb  
19 and then went through a process.

20 Q. What was the application process at  
21 that time?

22 A. I was interviewed by two people at  
23 MCA, initially, two people from MCHC, and then sat  
24 through a panel interview with many people from  
25 MCA.

1 D. Costa - Confidential

2 Q. So, I want to make sure I understood  
3 that. Did you tell me you were interviewed by two  
4 people at MCHA?

5 A. That's correct.

6 Q. And do you recall their roles?

7 A. Mr. Fukatani (phonetic) was president  
8 at the time, and Mr. Hirashima worked in human  
9 resources at the time.

10 Q. Did you say Hirashima?

11 A. Hirashima, H-I-R-A-S-H-I-M-A.

12 Q. Did you tell me that two other people  
13 at MCHC interviewed you?

14 A. Yes.

15 Q. What were their roles?

16 A. They were in the legal department  
17 of -- let me correct myself. There was no MCHC at  
18 the time. At the time, it was MCC, Mitsubishi  
19 Chemical Corporation.

20 Q. Okay. So that seems like another  
21 appropriate acronym to use. If I use the term MCC  
22 going forward, will you understand that I mean  
23 Mitsubishi Chemical Corp.?

24 A. Yes.

25 Q. What were the roles of those two

1 D. Costa - Confidential

2 people in the legal department?

3 A. They were the head of the legal  
4 department and the individual who was assigned to  
5 MCA legal in New York at the time.

6 Q. When you say assigned to MCA legal,  
7 what do you mean by that?

8 A. So, actually, now you're reminding  
9 that, actually, he was an employee of MCA at the  
10 time. When I -- he returned to MCC shortly  
11 thereafter.

12 Q. Okay.

13 A. So what I mean is that he was an  
14 ex-pat who was on foreign assignment to the United  
15 States from Japan.

16 Q. Are you thinking of a particular  
17 individual?

18 A. Yes. So, the individual who was  
19 working at MCA, who I mistakenly said was working  
20 at MCC, was Ken Fujiwara.

21 Q. Now, you mentioned a panel interview,  
22 correct?

23 A. Correct.

24 Q. Can you recall who was on the panel?

25 A. John Canfield, who was the head of HR



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2 of MCA; Mr. Ushijima, who was an ex-pat, I  
3 believe, with the title of executive  
4 vice-president at the time of the MCA, and many  
5 additional people who I can't specifically recall.

6 Q. Did you remain in the general counsel  
7 position --

8 MR. BERMAN: Withdrawn.

9 Q. At some point, was there a  
10 reorganization where Mitsubishi Chemical Holdings  
11 America was spun off somehow from Mitsubishi  
12 Chemical USA?

13 MS. GUERON: Objection.

14 A. I cannot remember the exact corporate  
15 change, but it was part of the reorganization when  
16 Mitsubishi Chemical Holdings Corp. -- when MCHC  
17 was formed.

18 Q. When did you first learn of the  
19 formation of MCHC?

20 A. I don't recall the date, but it was  
21 sometime prior to its formation.

22 Q. Can you give me a year, maybe?

23 A. Um, not at this moment.

24 Q. Do you know when MCHC was formed?

25 A. Not at this moment. I don't recall.

1 D. Costa - Confidential

2 Q. Okay. Do you know the business  
3 reasons behind the reorganization?

4 MS. GUERON: Objection.

5 A. The corporation law changed in Japan  
6 that allowed Japanese corporations, such at  
7 Mitsubishi Chemical Corporation, to create a  
8 holding company, and they did so for a variety of  
9 strategic and legal reasons.

10 Q. Do you know whether any other holding  
11 companies were formed contemporaneously with the  
12 formation of MCHC?

13 A. Any other holding companies where?  
14 I'm sorry.

15 Q. Let's start with here in America.

16 MR. FORTINSKY: Objection to form.

17 MS. GUERON: Same objection.

18 MR. VALLI: Are you all going to  
19 object?

20 MR. BERMAN: I'll withdraw the  
21 objection. Let's go about it in a different  
22 way.

23 Q. What business would you say that MCHA  
24 was in during your tenure there?

25 A. MCHA was a corporate service provider.

1 D. Costa - Confidential

2 It was the regional headquarters, regional  
3 administrative headquarters for MCHC, and it was  
4 in the business of providing corporate services.

5 Q. Was there a particular geographical  
6 region that MCHA was responsible for in connection  
7 with its provision of corporate services?

8 A. Generally, the Americas.

9 Q. Were there any other corporate service  
10 provider entities that were responsible for the  
11 provision of corporate services in other regions?

12 MS. GUERON: Objection.

13 A. Yes.

14 Q. Was one of those entities Mitsubishi  
15 Chemical Holdings Japan?

16 A. Yes.

17 Q. And was one of them known by the  
18 acronym MCHE?

19 A. Yes. That's an entity that I later  
20 became president of as well.

21 Q. What does that acronym stand for?

22 A. Mitsubishi Chemical Holdings Europe.

23 Q. Was there another administrative  
24 services or corporate service provider responsible  
25 for Beijing?

1 D. Costa - Confidential

2 A. Yes.

3 Q. What was that one called?

4 A. It was referred to as MCHB.

5 Q. During your tenure at MCHA, did it  
6 sell any products?

7 A. No.

8 Q. Did it sell any services?

9 A. Yes.

10 Q. What services did it sell?

11 A. It sold its services to affiliated  
12 companies.

13 Q. What services would that include?

14 MS. GUERON: Objection to form.

15 A. It included IT, HR, tax, risk  
16 management, finance, accounting, legal,  
17 compliance, ex-pat support. That's what comes to  
18 mind.

19 Q. Okay.

20 A. Internal audit. Sorry.

21 Q. Did those service offerings change  
22 over time during the course of your tenure?

23 A. Yes.

24 Q. Can you describe generally for me how  
25 they changed?

1 D. Costa - Confidential

2 A. They changed a number of times. There  
3 were services that existed -- were provided by  
4 MCHA that were subsequently provided by MCA, and  
5 there were services that were not originally  
6 provided by MCHA that were added to MCHA.

7 Q. I think I understood you to tell me  
8 that some of those services moved to MCA.

9 Did I get that right?

10 A. Correct.

11 Q. When you refer to MCA, what entity are  
12 you referring to?

13 A. It was not the same as the company I  
14 joined originally, it was a new MCA entity that  
15 was a subsidiary of MCC, whereas MCHA was a  
16 subsidiary of MCHC.

17 Q. So I just want to try to understand  
18 this a little bit more closely. When you were  
19 first hired by Mitsubishi, you went to work at  
20 Mitsubishi Chemical America, correct?

21 A. Correct.

22 Q. Okay. But then you told me that, at  
23 some point, the services offered by the successor  
24 interest entity moved to MCC?

25 A. Some services moved to MCA, which was

1 D. Costa - Confidential

2 a different entity, effectively, than the MCA that  
3 I joined.

4 Q. So were there two entities at the same  
5 time that had the same initials or acronym?

6 A. No, there were not.

7 Q. Okay. So how did it come to pass that  
8 you went from Mitsubishi Chemical America to  
9 another company that wasn't Mitsubishi Chemical  
10 America?

11 MS. GUERON: Objection.

12 A. So, MCA, when I joined, was an  
13 operating company.

14 Q. Okay.

15 A. It was not a service company. It was  
16 an operating company with plants, with all  
17 functions that you would find in Mitsubishi  
18 Chemical. There were several business units,  
19 there was R&D, etcetera.

20 Subsequently, MCHA became a services  
21 only company, when MCHC was formed.

22 Q. And at approximately that same time  
23 that you just described when MCHA became a  
24 services only company, did something similar  
25 happen with respect to MCHA?

1 D. Costa - Confidential

2 MS. GUERON: Objection.

3 A. No.

4 Q. Okay. Do you know if at approximately  
5 the same time these other corporate service  
6 providers became services only?

7 MS. GUERON: Objection.

8 A. I cannot say that.

9 Q. Okay. At the time when MCHA became a  
10 services only company, how many entities did it  
11 support?

12 A. I believe in the range of 40.

13 Q. Do you know how many of those were  
14 operating companies?

15 A. Almost all of them.

16 Q. Do you know where the R&D and  
17 production assets of Mitsubishi Chemical America  
18 moved to when it transitioned to the service -- on  
19 the course of its transitions to a service only  
20 entity?

21 A. Not to a single place. There were a  
22 number of entities that were established.

23 Q. Was one of those entities Mitsubishi  
24 Chemical Holdings Corp.?

25 MS. GUERON: Objection.

1 D. Costa - Confidential

2 A. I don't understand that question.

3 Q. When you first joined Mitsubishi  
4 Chemical America, it had operating units, correct?

5 A. Correct.

6 Q. It had business units, correct?

7 A. Correct.

8 Q. At some point, it no longer possessed  
9 those assets, correct?

10 A. Correct.

11 Q. Did any of those assets move to  
12 Mitsubishi Chemical Holdings Corp.?

13 A. No. They moved into entities in the  
14 United States.

15 Q. The entities that those assets moved  
16 into, were those subsidiaries of Mitsubishi  
17 Chemical Holdings Corp.?

18 MS. GUERON: Objection.

19 A. Ultimately, they were subsidiaries,  
20 but not directly owned by MCHC, no.

21 Q. Okay. During the course of your  
22 tenure at MCHA, did you work with employees in any  
23 of those other corporate service providers?

24 A. All of them, yes.

25 Q. So you worked at personnel at MCHJ?



1 D. Costa - Confidential

2 A. Yes.

3 Q. And by MCHJ, I'm referring to  
4 Mitsubishi Chemical Holdings Japan, okay?

5 A. Yes.

6 Q. Who was your primary point of contact  
7 at Mitsubishi Chemical Holdings Japan?

8 A. Ken Fujiwara.

9 Q. Do you know who Masanori Sakaguchi is?

10 A. Yes.

11 Q. Do you know if Masanori Sakaguchi was  
12 an employee of MCHJ at any point during your  
13 tenure at MCHA?

14 MS. GUERON: Objection.

15 A. I'm not sure who his employer was.

16 Q. Did you have any interactions with  
17 Masanori Sakaguchi in connection with your  
18 dealings with Mitsubishi Chemical Holdings Japan?

19 A. Yes.

20 Q. And what was the general nature of  
21 those interactions?

22 MS. GUERON: Objection.

23 A. He had been general counsel of  
24 Mitsubishi Rayon Corporation, and, as such, was a  
25 client for some purposes, and that was my initial

1 D. Costa - Confidential

2 contact with him. Subsequently, Mitsubishi Rayon  
3 Corporation was merged into MCC. At that point,  
4 he became a member of the legal group and  
5 continued to be primarily responsible for the  
6 legal work of the Mitsubishi Rayon businesses.

7 Q. You mentioned Mitsubishi Rayon. Did  
8 you have an acronym for that entity?

9 A. MRC.

10 Q. Are you familiar with a Mitsubishi  
11 entity named Lucite?

12 A. Yes.

13 Q. Was that part of MRC?

14 A. Yes, it was.

15 Q. At some point, did that change?

16 A. When MRC was merged into MCC, Lucite  
17 became a subsidiary of MCC.

18 Q. Now, you mentioned that you viewed  
19 Mr. Sakaguchi as a client, correct?

20 A. Correct.

21 Q. And when you refer to him as a client,  
22 what do you mean by that?

23 A. When MCHA managed legal matters for  
24 the MRC entities, such as Lucite, he wanted to be  
25 kept notified of what -- what we were working on.

1 D. Costa - Confidential

2 Q. Did you say MCHA -- I'm sorry, did you  
3 say MCHC entities?

4 A. I believe I said MRC. I may have  
5 misspoken. What I meant to say was, when we  
6 worked on MRC matters.

7 Q. Okay. During the course of your  
8 tenure as general counsel, did you have  
9 interactions with personnel at MCC?

10 A. Yes.

11 Q. And did you have a primary point of  
12 contact there?

13 A. No. At the time, there were 10  
14 business units, and my contacts depended on the  
15 business matter that was being worked on.

16 Q. With respect to legal work, did you  
17 have a particular point of contact at MCC that you  
18 worked with?

19 MS. GUERON: Objection.

20 A. I don't believe so.

21 Q. You mentioned 10 business units at  
22 MCC. Was one of those MCPFP?

23 A. No. That was a subsidiary of MCC with  
24 operations in Europe and the Americas and, I  
25 believe, Japan.

1 D. Costa - Confidential

2 Q. And MCPP would stand for Mitsubishi  
3 Chemical Plastic Polymers?

4 A. Performance Polymers.

5 Q. Performance Polymers. Okay. Thank  
6 you.

7 During your tenure, did you have  
8 business dealings with a man named Johei Takimoto?

9 A. Yes.

10 Q. And at the beginning of your -- when  
11 did you first interact with Mr. Takimoto?

12 A. I met him in April 1996. I believe I  
13 worked for him via e-mail as early as February  
14 1996.

15 Q. Okay. When you first began working  
16 with Mr. Takimoto, what was his role?

17 A. He was a member of the legal  
18 department in Japan.

19 Q. When you refer to the legal department  
20 in Japan, are you referring to MCHJ or something  
21 else?

22 A. Something else.

23 Q. What entity were you referring to?

24 A. MCC.

25 Q. So, at some point, was there a

1 D. Costa - Confidential

2 restructuring where the legal department of MCC  
3 was no longer performing legal work?

4 MS. GUERON: Objection.

5 A. What I can say is that when MCHC was  
6 created, MCHJ was created.

7 Q. Okay. So upon the formation of MCHJ,  
8 did MCHJ take on the function of the legal  
9 department?

10 MS. GUERON: Objection.

11 A. At least in part.

12 Q. When you say "in part," are you  
13 referring to the existence of other corporate  
14 services that were provided or something else?

15 A. I do not know.

16 Q. Okay.

17 A. I just know that that was true, at  
18 least in part.

19 Q. At some point in time, did MCHJ become  
20 responsible for legal work?

21 MS. GUERON: Objection.

22 A. For some legal work, yes.

23 Q. Do you know when that occurred?

24 A. No.

25 Q. And at some point in time, did

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2 Mr. Takimoto work at MCHJ?

3 A. No. Mr. Takimoto left the legal  
4 function in 1997. Oh, 1996. Excuse me. 1996.  
5 Shortly after I joined.

6 Q. What did Mr. Takimoto move on to when  
7 he left the legal function?

8 A. He was in the secretary's office,  
9 which is the office that supported the chairman  
10 and CEO of MCC.

11 Q. Now, when you referred to the 10  
12 business units earlier, did that include MTPC  
13 Pharma?

14 A. No.

15 Q. What was MTPC Pharma?

16 A. MTPC Pharma was the result of a series  
17 of mergers of Japanese pharmaceutical companies.  
18 It was a publicly listed company in Japan that was  
19 owned in part by MCHC.

20 Q. During your tenure at MCHA,  
21 approximately how many employees did MTPC Pharma  
22 have?

23 MS. GUERON: Objection.

24 A. I don't know.

25 Q. Was it less than a hundred?

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2 A. At one point, it was less than a  
3 hundred. At one point, it was more than a  
4 hundred.

5 Q. Okay. Did the number of employees  
6 change substantially over time?

7 MS. GUERON: Objection.

8 A. The number of employees of that group  
9 grew gradually and, eventually, significantly.

10 Q. Okay. At the point when it had the  
11 maximum head count during your tenure, do you know  
12 approximately how many employees it had?

13 A. I don't. I'm sorry. I apologize.  
14 What entity are we talking about? I've lost  
15 track.

16 Q. MTPC Pharma.

17 A. Okay. MTPC, I was -- I misunderstood  
18 your question, so everything I said is not  
19 accurate.

20 Q. Okay.

21 A. MTPC, of the publicly listed company  
22 in Japan, had tens of thousands of employees at  
23 all relevant times.

24 Q. Did it have a pharma subsidiary?

25 A. Yes.

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2 Q. So when you're referring to the tens  
3 of thousands of employees, you mean the entire  
4 company, not just the pharma, right?

5 A. No, that -- pharma. Globally, MTPC  
6 had tens of thousands of employees.

7 Q. Okay. Did MTPC Pharma have any U.S.  
8 subsidiaries?

9 A. Yes, it did.

10 Q. Were those doing pharma work?

11 A. Yes, they were.

12 Q. Do you know how many pharma  
13 subsidiaries in the US MTPC had during your  
14 tenure?

15 MS. GUERON: Objection.

16 A. Approximately six.

17 Q. Does one come to mind as being the  
18 largest of those six?

19 MS. GUERON: Objection.

20 Q. In terms of employees?

21 MS. GUERON: What time period are we  
22 talking about now?

23 MR. BERMAN: We can answer that next.

24 A. I believe it was MTPA.

25 Q. During the course of your tenure with



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2 MCHA, what was the largest size, in terms of  
3 employee head count, that any of those six U.S.  
4 subsidiaries reached?

5 MS. GUERON: Objection.

6 A. I don't recall.

7 Q. Could you tell me approximately?

8 MS. GUERON: Objection.

9 A. Something over a hundred.

10 Q. Okay. Did any of those six American  
11 subsidiaries have thousands of employees?

12 A. No.

13 Q. The employees at those U.S. entities,  
14 were they primarily Japanese expatriates?

15 MS. GUERON: Objection.

16 A. No.

17 Q. Do you know approximately how much  
18 revenue the U.S. subsidiaries were responsible for  
19 during your tenure --

20 MS. COLWIN: Objection.

21 MS. GUERON: Objection.

22 Q. -- on an annual basis?

23 MS. GUERON: Objection.

24 A. How are you defining subsidiaries?  
25 Subsidiaries of what entity?

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2 Q. Those six. Those six entities that  
3 you just described for me that were U.S.  
4 subsidiaries of MTPC Pharma.

5 MS. GUERON: Objection.

6 A. Very limited.

7 Q. Did any of those U.S. subsidiaries  
8 manufacture drugs regulated by the U.S. FDA?

9 MS. GUERON: Objection.

10 A. So, I want to go back to the time  
11 period that you defined. I believe you said 2014  
12 to the present. So, I am -- I have answered so  
13 far for the period up until when I left in 2018 --  
14 or, actually, I was answering for the period when  
15 Jennifer was employed. The pharma companies  
16 launched a product during my tenure which resulted  
17 in revenue. They had product they were selling in  
18 the United States. I do not know what the revenue  
19 was.

20 Q. Do you know approximately when the  
21 product was launched?

22 A. 2017, give or take a year.

23 Q. Was that the first product that was  
24 launched or were there others?

25 A. That's the first that was commercially

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2 launched.

3 Q. Do you know the name of it?

4 A. Not at this moment.

5 Q. Do you know the name of the entity  
6 that launched that product?

7 A. No.

8 Q. Do you know what the purpose of the  
9 product was?

10 MS. GUERON: Objection.

11 A. The drug was to treat patients who had  
12 ALS.

13 Q. So, I want to go back to MCHA for a  
14 moment.

15 During your tenure, you had the  
16 position of general counsel of MCHA, correct?

17 MS. GUERON: Objection.

18 A. Yes.

19 Q. For some portion of your time there,  
20 right?

21 A. Yes.

22 Q. At some point, your role changed,  
23 correct?

24 A. Yes.

25 Q. Approximately when did your role

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2 change?

3 A. April 1st, 2015.

4 Q. At that time, what did your role

5 change from and to?

6 A. It changed from general counsel  
7 executive vice-president and chief compliance  
8 officer, to president. I was also a member of the  
9 board of MCHA prior to my promotion, and the  
10 corporate secretary.

11 Q. When did you become a member of the  
12 board of MCHA?

13 A. I don't recall.

14 Q. Was it approximately the time you were  
15 hired as a general counsel?

16 A. No.

17 Q. So it was sometime later?

18 A. Significantly later.

19 Q. Okay. Approximately when did you  
20 become the corporate secretary of MCHA?

21 A. I became assistant secretary within a  
22 year or two of being hired, and became secretary  
23 at some point within a few years after that.

24 Q. Okay. Did you serve as the corporate  
25 secretary for any other Mitsubishi entities?

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2 A. Yes.

3 Q. Approximately how many?

4 A. At least a couple of dozen.

5 Q. Okay. When did you first become the  
6 corporate secretary of any entity other than MCHA?

7 A. I do not recall.

8 Q. Was it approximately the time you were  
9 hired?

10 A. No.

11 Q. Was it sometime later than that?

12 A. Sometime significantly later than  
13 that.

14 Q. Okay. Who appointed the board of MCHA  
15 when you were a member of the board?

16 MS. GUERON: Objection.

17 A. I don't know.

18 Q. Well, at some point, you became the  
19 corporate secretary of MCHA, correct?

20 A. Correct.

21 Q. At that time, did you know who was on  
22 the Board of Directors?

23 A. So, again, I need -- I want to  
24 clarify.

25 Q. Sure.

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2 A. I was the corporate secretary of MCHA  
3 from the time of its creation. I thought you were  
4 asking me to go back to when I first became  
5 general counsel in 1996. So, I just want to  
6 clarify that the years aren't clear to me in some  
7 of your questions.

8 Q. Okay.

9 A. So, some of my answers might not be  
10 fully accurate.

11 Q. Okay. That's fine. I appreciate you  
12 clarifying. Generally speaking, I'm interested in  
13 the period from 2014 forward.

14 A. Okay.

15 Q. But let's go about it a slightly  
16 different way.

17 You explained to me that you were  
18 first hired into Mitsubishi Chemical America, and  
19 then, at some point, you were employed by MCUSA,  
20 correct?

21 A. Correct.

22 Q. And, at some point, you became  
23 employed by MCHA, correct?

24 A. Correct.

25 Q. And I think you just told me that you

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2 were the corporate secretary of MCHA from the time  
3 of its creation, correct?

4 A. Correct.

5 Q. At the time that MCHA was created and  
6 you became the corporate secretary, did you know  
7 who the Board of Directors was at that time?

8 A. I'm not certain.

9 Q. Okay. At some point in time when you  
10 were the corporate secretary of MCHA, did you come  
11 to learn who the board members were?

12 A. I always knew at the time who they  
13 were. I do not know, sitting here now, who they  
14 were.

15 Q. So, at the time, you knew the  
16 identities of all the board members?

17 A. Absolutely.

18 Q. At the time when you were the  
19 corporate secretary for MCHA, who was the head  
20 executive of that entity?

21 MS. GUERON: I'm sorry, can you read  
22 that back.

23 (Whereupon, the requested question was  
24 read back by the reporter.)

25 MS. GUERON: Objection.

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2 Q. At the time you first became the  
3 corporate secretary, who was the head executive of  
4 the entity?

5 A. I believe it was Hiroo Tanaka, who was  
6 president at that time.

7 Q. Do you know how Mr. Tanaka was  
8 selected to be president of that entity?

9 A. No.

10 Q. At some point in time, did the  
11 president change from Mr. Tanaka to someone else?

12 A. Yes.

13 Q. Who became president after Tanaka  
14 left?

15 A. Shoji Yoshisato.

16 Q. Do you know how Shoji Yoshisato came  
17 to be president?

18 A. No, I do not.

19 Q. You were the corporate secretary at  
20 the time of the transition from Mr. Tanaka to  
21 Mr. Yoshisato as president?

22 A. Correct.

23 Q. Was there a resolution that  
24 effectuated that change?

25 A. Yes.



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2 Q. So, at the time, you knew how that  
3 occurred, correct?

4 MS. GUERON: Objection.

5 A. If you've referring to how it legally  
6 became effectuated, yes, I was aware.

7 Q. So, how did it legally become  
8 effectuated?

9 A. The Board of Directors appointed  
10 Mr. Yoshisato to succeed Mr. Tanaka as president  
11 of MCHA.

12 Q. What was the word you used, legally  
13 speaking, how the Board of Directors of MCHA is  
14 selected?

15 A. Legally speaking, the shareholder  
16 approves the Board of Directors and appoints -- I  
17 should say appoints the Board of Directors.

18 Q. During your tenure at MCHA, was MCHA a  
19 public company?

20 A. No.

21 MS. GUERON: Objection.

22 Q. Was it a private company?

23 A. Yes.

24 Q. So it was not listed on any securities  
25 exchange, correct?

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2 A. Correct.

3 Q. Do you know who the shareholder or  
4 shareholders of MCHA were during your tenure at  
5 the company?

6 MS. GUERON: Objection.

7 MS. COLWIN: Objection.

8 MR. BERMAN: You can answer.

9 A. The shareholder of MCHA was at all  
10 times MCHC.

11 Q. So, by the transitive property, did  
12 MCHC still appoint the members of the Board of  
13 Directors of MCHA?

14 MS. GUERON: Objection, but go ahead.

15 A. Yes.

16 Q. Did MCHA issue dividends?

17 A. Yes -- oh, MCHA. Give me a minute.  
18 Yes.

19 Q. Who determined whether dividends would  
20 be issued by MCHA, legally speaking?

21 A. A determination was made by MCHC and  
22 MCHA.

23 Q. During your tenure as the general  
24 counsel of MCHA, did MCHA enter into legal  
25 services agreements?

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2 A. Yes.

3 Q. And were those legal services  
4 agreements between MCHA and some other affiliates  
5 of MCHC?

6 A. Yes.

7 Q. Do you know approximately how many  
8 MCHC affiliates entered into legal services  
9 agreements?

10 A. I believe it was about 40.

11 Q. And as general counsel of MCHC, were  
12 you the signatory of the legal services agreements  
13 on behalf of MCHA?

14 A. I was general --

15 MS. GUERON: Objection. You misspoke.  
16 You said she was GC of MCHC.

17 MR. BERMAN: MCHA. Sorry.

18 MS. GUERON: Thank you.

19 MR. BERMAN: Let me just go back and  
20 just make sure that's clear.

21 Q. At the time when you were the general  
22 counsel of MCHA, did the company enter -- did MCHA  
23 enter into legal services agreements with other  
24 Mitsubishi affiliates?

25 A. Yes.

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2 Q. Did those legal services agreements  
3 provide for revenue to be paid to MCHA for  
4 performing services?

5 A. Yes.

6 Q. Were those services of legal nature,  
7 meaning they were legal services?

8 A. Some of the services provided by MCHA  
9 were legal services, and there were separate legal  
10 services agreements which provided for fees for  
11 legal services.

12 Q. With respect to the other  
13 administrative services that were provided by MCHA  
14 that were of a non-legal services basis, was there  
15 a separate agreement that covered those?

16 A. Yes.

17 Q. Was there a name for that agreement?

18 A. I believe we called it the  
19 administrative services agreement.

20 Q. During the time when you were general  
21 counsel for MCHA, did you have the discretion to  
22 decline to enter into a legal service agreement  
23 with a Mitsubishi affiliate?

24 MR. FORTINSKY: Objection to form.

25 A. Did we have the what?

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2 Q. The discretion to decline to enter  
3 into a legal services agreement?

4 A. I only once declined, in part, to  
5 enter into a legal services agreement.

6 Q. What was the general basis for  
7 declining?

8 MS. COLWIN: Objection. I would say,  
9 if there was any privileged information,  
10 then I would say not to disclose it.

11 MR. BERMAN: Okay. To the extent that  
12 you can answer that question without  
13 revealing any privileged communications with  
14 counsel, please do so.

15 MS. GUERON: Wait. Hold on. This is  
16 not a privilege that -- my understanding --  
17 I represent the witness. Mercedes  
18 represents the company. I don't think she's  
19 describing a privileged communication with  
20 counsel. I think she's describing a  
21 privilege that belongs to MCHA.

22 Q. To the extent that you can answer  
23 without vitiating a privilege that is not yours to  
24 waive, can you please do so?

25 A. I cannot do so.

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2 Q. Okay. That is fine.

3 At the time when you declined to enter  
4 into a legal services agreement, were you in  
5 communication with any businesspeople concerning  
6 that decision?

7 A. All of my discussions regarding legal  
8 services agreements were with the businesspeople  
9 directly for the businesses that were contracting  
10 for services.

11 Q. Can you identify the entity that you  
12 declined to enter into a legal services agreement  
13 with?

14 MS. GUERON: Hold on a second.

15 MS. COLWIN: No.

16 MR. BERMAN: I don't see how that  
17 could be privileged, Counsel.

18 MS. COLWIN: I'd like to confer -- why  
19 don't you hold on to that question. Let's  
20 revisit it after the break.

21 RL MR. BERMAN: Okay. We can mark that  
22 question. Thank you.

23 Q. Without waiving any privilege, was the  
24 decision not to enter into a legal services  
25 agreement with whatever entity an exercise of your

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2 discretion?

3 A. Yes.

4 Q. You said you only declined that

5 agreement in part, correct?

6 A. That's correct.

7 Q. So, to some extent, that agreement

8 ended up being executed?

9 A. Correct.

10 Q. Okay. With respect to administrative  
11 services agreements, was it within your discretion  
12 to decline entering into those?

13 A. To an extent.

14 MR. FORTINSKY: Objection to form.

15 Q. Can you clarify your response?

16 A. There were some services where I had  
17 discretion and some where I did not.

18 Q. Which ones did you not have discretion  
19 over?

20 A. Internal audit and tax.

21 Q. So, who made the determinations with  
22 respect to the administrative service agreements  
23 covering internal audit?

24 MS. GUERON: Objection.

25 A. The agreements themselves were drafted

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2 by, governed by, entered into by MCHA, but the  
3 existence of a relationship was required by MCHC  
4 as shareholder, because they were ultimately  
5 responsible for complying with Japanese tax law  
6 and other public company requirements.

7 Q. Okay. Does that also hold true for  
8 tax?

9 MS. GUERON: Objection.

10 A. I believed I said internal audit and  
11 tax. If I did not, I misspoke.

12 Q. Well, you identified those two  
13 functions, and then you indicated that MCH -- that  
14 the existence of the relationships was required by  
15 MCHA as a shareholder because it had compliance  
16 obligations in Japan, correct?

17 MS. GUERON: Objection. You  
18 misspoke -- misrepresented her testimony,  
19 just because the acronym is wrong.

20 MR. BERMAN: Okay.

21 Q. So, I believe you said that the  
22 existence of the relationship was required by MCHC  
23 as a shareholder.

24 Did I get that right?

25 A. That's correct.



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2 Q. Okay. And that was due to their  
3 obligations in Japan?

4 A. That's correct.

5 Q. Okay. And they had obligations in  
6 Japan with respect to both internal audit and tax,  
7 correct?

8 MS. GUERON: Objection.

9 A. Yes --

10 MS. GUERON: Go ahead.

11 A. That's correct.

12 Q. During your tenure at MCHA as general  
13 counsel, were you responsible for supervising the  
14 legal department?

15 A. I was responsible for the MCHA legal  
16 department, yes.

17 Q. What were your responsibilities in  
18 connection with supervising the legal department?

19 A. I managed all department members. I  
20 managed the relationships with all of our clients.  
21 So, that included negotiating the legal services  
22 agreements and overseeing all project matters. I  
23 worked with, to varying extents, the legal  
24 departments in other countries. I worked  
25 directly, managed directly the largest projects

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2 that came to us, the large M&A, for example, the  
3 more sensitive projects. And I worked very  
4 closely across functions with other members of  
5 MCHA, people in all of our affiliates who had  
6 business in the United States, and anyone who  
7 requested my support in the group.

8 MR. BERMAN: Excuse me. Please don't  
9 coach the witness during her response.

10 THE WITNESS: She asked me if I needed  
11 a break.

12 MS. GUERON: I said to her, we've been  
13 going for about an hour, would you like a  
14 break.

15 MR. BERMAN: Okay. Please do that on  
16 the record, and --

17 MS. GUERON: I don't have any  
18 obligation to do that on the record.

19 THE WITNESS: So, I need to take  
20 medication at 11:30. I will ask for a break  
21 in ten minutes.

22 MR. BERMAN: Okay. That's fine. And  
23 I'm happy to accommodate any break you want,  
24 just let me know. And I speak kind of  
25 quickly, so, in the course of any of your

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2 responses, feel free to work in that you  
3 would like a break, okay?

4 THE WITNESS: Yes.

5 MR. BERMAN: All right. This is not  
6 an endurance contest.

7 THE WITNESS: Yes.

8 Q. All right. So, did you complete your  
9 response?

10 A. I don't remember what...

11 Q. Okay. I'll just clarify -- I'll  
12 repeat my understanding and --

13 MS. GUERON: Actually, maybe --

14 MR. BERMAN: You want to read back the  
15 response?

16 (Whereupon, the requested answer was  
17 read back by the reporter.)

18 A. I also headed up the compliance  
19 function, ran the compliance function. While I  
20 was general counsel, during part of that period, I  
21 also was responsible for internal audit. It  
22 reported to me directly for a period of time. I  
23 also had direct responsibility for HR during a  
24 period. I had involvement in risk management both  
25 in terms of insurance and risk management in the

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2 enterprise sense. I supported -- oh, the scope of  
3 my work also included intellectual property. And  
4 I will mention, although it maybe is included in  
5 my earlier discussion, Pharma, Life Science  
6 Institute, Nippon Gohsei, and a number of clients  
7 in Japan that I supported directly. I think there  
8 are others, but this is what comes to mind right  
9 now.

10 Q. Okay. For now, have you completed  
11 your response?

12 A. For now.

13 Q. If you have any other items that occur  
14 to you as we go by, I'm going to add them to the  
15 list, that's fine. Just let me know, okay?

16 A. Yes.

17 Q. All right. You mentioned that you  
18 managed all department members, correct?

19 A. Yes.

20 Q. Did that include attorneys?

21 A. Yes.

22 Q. Okay. What was the largest number of  
23 attorneys that you had under your supervision  
24 during your position as GC?

25 A. I think five US attorneys.

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2 Q. Okay. And you mentioned relationships  
3 with clients, correct?

4 A. Oh, six.

5 Q. Six U.S. attorneys. Okay.

6 You mentioned that you were  
7 responsible for relationships with clients,  
8 correct?

9 A. Correct.

10 Q. By clients, who did you mean?

11 A. In that instance, I was referring to  
12 those entities with whom we had legal services  
13 agreements, where I worked with them to determine  
14 what the scope of services would be that was  
15 provided to them, and then I was also responsible  
16 and accountable for all legal services provided  
17 under those agreements by members of the  
18 department.

19 Q. Okay. So were all of those clients  
20 affiliates of Mitsubishi?

21 MS. GUERON: Objection.

22 A. It depends on how you define  
23 affiliates, but they all could be called  
24 affiliates of Mitsubishi, yes.

25 Q. Okay. Did you provide legal services

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2 in the marketplace, in general?

3 A. No.

4 Q. So other entities that wanted your  
5 legal services could not obtain them, could they?

6 A. No, they could not.

7 Q. Okay. So, you mentioned that you  
8 worked with legal departments in other countries,  
9 correct?

10 A. Correct.

11 Q. And by legal departments in other  
12 countries, were you referring to MCHJ?

13 A. That is included, yes.

14 Q. Were you including MCHE?

15 A. Yes.

16 Q. Were you including MCHB, Beijing?

17 A. Yes.

18 Q. Any others that I missed?

19 A. Lucite had a general counsel located  
20 in England, and Quadrant had a general counsel  
21 located in Switzerland.

22 MR. BERMAN: Are we okay on time?

23 THE WITNESS: My alarm will go off.

24 Thank you.

25 Q. You mentioned M&A, correct?

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2 A. Yes.

3 Q. Did you perform any M&A transactions  
4 at Cleary?

5 A. No.

6 Q. So what was the first M&A transaction  
7 you were working on?

8 A. I don't recall what was first. I  
9 worked on 30 or so in my 19 years, but the first  
10 one was definitely -- the first one or more was in  
11 my first year.

12 Q. Okay. In your earliest transactions  
13 that were related to M&A, was your work supervised  
14 by any other lawyers?

15 A. We worked with outside counsel. In  
16 the beginning, I worked with Cleary Gottlieb.

17 Q. Okay. So you were guided by outside  
18 counsel on those transactions?

19 MS. GUERON: Objection.

20 A. I wouldn't say guided, but, yes, I  
21 learned how to do M&A by working with Cleary  
22 Gottlieb and other large law firms.

23 Q. When you said you worked across  
24 functions with other members of the MCHA team and  
25 affiliates with business in the United States,

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2 what other functions were you referring to?

3 A. It's very varied, but that included  
4 working with tax, HR, internal audit, intellectual  
5 property, IT, finance, and my reference to  
6 business units was just there really was no area  
7 of business that I did not, at one time, cover.

8 Q. Okay. You mentioned that you headed  
9 up compliance, correct?

10 A. Correct.

11 Q. Did you perform any legal work for  
12 compliance during your tenure at Cleary?

13 MS. GUERON: Objection.

14 A. It was not referred to as such, no.

15 Q. Regardless -- without regard for what  
16 they referred to it as, or what terminology, did  
17 you perform legal services related to compliance  
18 at Cleary?

19 MS. GUERON: Objection.

20 A. I would say no.

21 Q. All right. What was the general  
22 nature of your work at Cleary?

23 A. I was a litigator.

24 Q. Was that primarily commercial  
25 litigation?



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2 A. Yes.

3 Q. Any other major types of work that you  
4 performed at Cleary?

5 A. I did securities litigation, so I  
6 actually did M&A from the litigation side. I did  
7 some employment litigation. I did a lot of pro  
8 bono litigation. I did a lot of international  
9 matters as well.

10 Q. Did any of your employment litigation  
11 at Cleary include gender discrimination claims?

12 A. No, it did not.

13 Q. Did any of it include any wrongful  
14 termination claims?

15 A. I don't believe so.

16 Q. Did it include any retaliatory  
17 discharge claims?

18 A. I don't believe so.

19 Q. Did you have any claims concerning --  
20 or did you perform any legal work related to Equal  
21 Pay Act? The Equal Pay Act?

22 A. No.

23 Q. Did you conduct any pay equity  
24 analyses at Cleary?

25 A. No.

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2 Q. Did you do any investigative work at  
3 Cleary?

4 MS. GUERON: Objection.

5 A. In the employment context, no.

6 Q. Did you do any white collar  
7 investigations?

8 A. No.

9 Q. Did you do any criminal  
10 investigations?

11 A. No.

12 Q. Did you do any accounting  
13 investigations?

14 A. No.

15 Q. What about internal audit?

16 A. No.

17 Q. Did you do any intellectual property  
18 work at Cleary?

19 A. Some, yes.

20 Q. Was that related to a particular  
21 subject matter?

22 A. What I can recall, related to  
23 trademarks.

24 Q. Any patent work?

25 A. Not that I recall.

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2 Q. Did you do any pharmaceutical work at  
3 Cleary?

4 Is that your alarm?

5 A. Yes, that is, but you can finish.

6 Q. If you can just answer that question,  
7 we can take a break.

8 Did you do any pharma work at Cleary?

9 A. I don't believe so.

10 MR. BERMAN: Okay. Let's take a  
11 break. How long would you like?

12 THE WITNESS: I need two minutes.

13 MR. BERMAN: Okay. Let's take a  
14 break.

15 THE WITNESS: Thank you.

16 (Whereupon, a recess was taken at this  
17 time.)

18 MR. BERMAN: Back on the record.

19 Could you just read back my last  
20 question.)

21 (Whereupon, the requested question was  
22 read back by the reporter.)

23 Q. Did you do any life science work at  
24 Cleary?

25 A. I don't believe so.

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2 Q. You mentioned an entity named Nippon  
3 Gohsei; is that correct?

4 A. Yes.

5 Q. How do you spell the second word?

6 A. G-O-H-S-E-I.

7 Q. What did they do, or what did they do  
8 at the time that you were general counsel?

9 MS. GUERON: Objection.

10 A. They produced various chemicals.

11 Q. So was that intended as an example of  
12 pharma or life science work?

13 A. No.

14 Q. Okay. So you viewed that as a  
15 separate subject matter that you worked on?

16 A. It was a publicly traded company.

17 Q. And then you mentioned direct support  
18 for clients in Japan.

19 What clients in Japan were you  
20 referring to?

21 A. Various business units of MCC, LSII,  
22 MTPC. Prior to the merger, MPI. And Nippon  
23 Gohsei. And probably others.

24 Q. You mentioned LSII, correct?

25 A. Yes.

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2 Q. What is that?

3 A. Life Science Institute.

4 Q. Is there a second I in the acronym?

5 A. I think it was Inc.

6 Q. And you mentioned MTPC?

7 A. That is Mitsubishi Tanabe Pharma  
8 Corporation.

9 Q. And you mentioned MPI. What is that?

10 A. Mitsubishi Plastics, Inc.

11 Q. When you're referring to clients  
12 generally, do you mean the term "client" in the  
13 legal client sense or in a more broad sense?

14 MS. GUERON: Objection.

15 A. I believe in every -- let me restate  
16 that.

17 The majority of the time, we had legal  
18 services agreements with the entities I worked  
19 with, and they were clients by contract. There  
20 were times when, prior to signing a legal services  
21 agreement, or for some reason, I worked with  
22 entities which were not under contract.

23 Q. In those instances where you worked  
24 with entities that were not under contract, were  
25 you providing legal services to those entities?

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2 MS. GUERON: Objection.

3 A. So, I'm thinking that there was always  
4 a contract to establish attorney/client privilege,  
5 but there was not necessarily a fee, and that's  
6 what I was trying to distinguish earlier.

7 Q. Okay. Did the legal services  
8 agreements generate substantial fees for MCHA?

9 MS. GUERON: Objection.

10 A. Yeah.

11 MS. GUERON: Go ahead.

12 A. The legal services fees covered,  
13 dollar for dollar, the cost of the legal  
14 department.

15 Q. When you refer to a legal department,  
16 what is it a department of?

17 A. I believe your question was about  
18 legal, so I'm referring to the legal department.

19 Q. A department implies that there is  
20 some larger organization that it slots into. So  
21 when you say "legal department," do you mean the  
22 legal department of MCHA?

23 A. Yes, that's what I mean.

24 Q. And then with respect to -- I think  
25 you mentioned there was a non-legal service -- oh,

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2 an administrative services agreements. Did the  
3 administrative services agreements generate  
4 substantial fees?

5 MS. GUERON: Objection.

6 A. The administrative services agreements  
7 generated sufficient fees to cover all costs, plus  
8 a margin for all services other than legal  
9 services.

10 Q. Okay. So if everything went according  
11 to plan, does that mean there would be profits for  
12 MCHA?

13 MS. GUERON: Objection.

14 A. Yes. To the best of my recollection,  
15 there were always profits in MCHA.

16 Q. And then those profits would be  
17 available for use for dividends, if the board  
18 wanted them to, right?

19 A. Correct.

20 Q. During your time as general counsel  
21 for MCHA, did you engage in business discussions  
22 with businesspeople concerning the issuance of  
23 dividends?

24 MS. GUERON: Why don't you just answer  
25 that yes or no, just to make sure there is

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2 no privilege problems, and we can go from  
3 there.

4 A. No. My response was going to be, I'm  
5 not sure I understand the question.

6 MS. GUERON: Okay.

7 Q. Okay. In your role as general  
8 counsel, did you provide non-legal advice  
9 concerning dividends?

10 A. No.

11 Q. During your tenure as president of  
12 MCHA, did you engage in business conversations  
13 with businesspeople concerning the issuance of  
14 dividends?

15 A. Yes.

16 Q. So that changed between the time that  
17 you were general counsel and president, correct?

18 A. Yes.

19 Q. So, in your discussions concerning the  
20 issuance of dividends, who did you have those  
21 conversations with?

22 MS. GUERON: Objection. Go ahead.

23 A. With the head of finance and  
24 accounting at MCHA.

25 Q. Was that a particular person?



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2 A. It was Kohei Ichia during the  
3 beginning of your time period, and it was Shin  
4 Iguchi after that.

5 Q. With respect to Shin Iguchi, was this  
6 a male or a female?

7 A. A man.

8 Q. Was Shin Iguchi there during your  
9 tenure as general counsel?

10 A. No, he was not.

11 Q. So only during your tenure as  
12 president was Shin Iguchi there?

13 A. Yes.

14 Q. During your tenure as president, was  
15 Shin Iguchi payrolled by MCHA?

16 MS. GUERON: Objection.

17 THE WITNESS: I'm sorry, I got  
18 distracted. Can you ask the question again?

19 MR. BERMAN: Can you read it back.

20 (Whereupon, the requested question was  
21 read back by the reporter.)

22 A. Yes.

23 Q. Who set the compensation for  
24 Mr. Iguchi?

25 A. I did.

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2 Q. As part of setting Mr. Iguchi's  
3 compensation, did you take into account budgeting  
4 for MCHA?

5 A. Yes.

6 Q. How did you take into account  
7 budgeting when setting compensation for  
8 Mr. Iguchi?

9 A. There was an amount allocated in the  
10 budget, in the previous budget, when I became  
11 president, and I used that as the starting point.

12 Q. Did you have discussions with any  
13 non-MCHA personnel concerning the setting of  
14 compensation for Mr. Iguchi?

15 A. No.

16 Q. During your tenure as president, when  
17 you first became president, there was already a  
18 budget established?

19 MS. GUERON: Objection.

20 A. There was an existing budget.

21 Q. Was that budget set annually?

22 A. Yes.

23 Q. So then, during your tenure as  
24 president, did there come a time when you set the  
25 budget?

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2 A. Yes.

3 Q. And did you consult with any non --

4 MR. BERMAN: Withdrawn.

5 Q. Did you communicate with any non-MCHA  
6 personnel in establishing that budget?

7 A. Not for creating the budget, no.

8 Q. During your tenure as president at  
9 MCHA, did you have discretion to increase the  
10 budget unilaterally?

11 A. It depended.

12 Q. What did it depend on?

13 A. Because the budget for MCHA -- because  
14 the funds to cover the budget of MCHA were  
15 determined by the fees that we charged our  
16 clients, there were changes that occurred outside  
17 our control that led to us having more funds or  
18 lesser funds. And the discretion I had, the  
19 extent of the discretion depended on our funding  
20 situation.

21 Q. Did there ever come a time when  
22 circumstances outside of MCHA's control led to  
23 MCHA having less funds than expected?

24 A. Yes.

25 Q. How frequently did that take place?

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2 A. It happened a number of times. I  
3 can't say how frequently.

4 Q. And on the occasions where that  
5 happened, how would that impact the budget, if at  
6 all?

7 MS. GUERON: Objection.

8 A. If we had less funds in the budget,  
9 then we needed to figure out how to manage the  
10 budget going forward, with that adjustment.

11 Q. Were there any times where you  
12 requested that MCHC provide funds to MCHA?

13 A. MCHA paid a service fee under service  
14 agreements, as did all the other clients, so I  
15 negotiated with them once a year for that fee.

16 Q. Did you mean to say MCHC paid a  
17 service fee?

18 A. I did.

19 Q. And that fee was paid to MCHA?

20 A. Correct. As all other clients did.

21 Q. During the course of your tenure at  
22 MCHA as general counsel, you interacted with  
23 personnel at MCHJ?

24 A. Yes.

25 Q. What was the purpose of interacting

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2 with personnel at MCHJ?

3 MS. GUERON: Objection.

4 A. As stated, when we worked on matters  
5 for which we had a common client, we would speak  
6 to them to varying degrees.

7 Q. When you refer to a common client, are  
8 you referring to Mitsubishi affiliates?

9 A. Correct.

10 Q. And when you had a common client with  
11 MCHJ, what circumstances would lead to that being  
12 a common client of both MCHA and MCHJ?

13 MS. GUERON: Objection.

14 A. If MCHA legal was handling a matter  
15 for MCC, then MCC was our common client.

16 Q. Okay. Is that reference to MCC meant  
17 to be an example or is that the only time that  
18 would happen?

19 A. Yes. That's an example.

20 Q. Would that also be true with respect  
21 to the 40 or so other affiliates?

22 MS. GUERON: Objection.

23 A. I'm not sure what you're asking.

24 Q. Did you have other common clients  
25 besides MCC?

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2 A. Yes.

3 Q. Okay. When you had a common client,  
4 what role was MCHA playing with respect to those  
5 representations?

6 MS. GUERON: Objection.

7 A. It was completely case by case.

8 Q. Okay. Were those matters within a  
9 certain geographical jurisdiction?

10 A. Not necessarily.

11 Q. Did those matters have a certain  
12 subject matter in common?

13 A. I'm -- I'm sorry, I've lost your  
14 question again. What do you mean, that they had a  
15 subject matter in common?

16 Q. These common clients that MCHA and  
17 MCHJ had, was that occasioned by the client having  
18 particular legal needs that MCHA could satisfy?

19 A. Yes.

20 Q. Oh, okay.

21 And so would those needs all be  
22 connected to the geographical area that you  
23 described previously for MCHA?

24 A. Not necessarily.

25 Q. Okay. So there were some -- do you

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2 want to explain your answer?

3 A. I'm sorry.

4 Q. That's okay.

5 Do you want to clarify your answer?

6 A. If you were asking whether it was  
7 limited to the Americas, the answer is no. I did  
8 a lot of work outside the Americas.

9 Q. When you performed work outside of the  
10 Americas, was it in connection with MCHJ?

11 MS. GUERON: Objection.

12 A. Not necessarily.

13 Q. Was it in connection with one of the  
14 other legal services providers that you mentioned  
15 previously?

16 A. Not necessarily.

17 Q. Did MCHJ play any role in setting  
18 MCHA's budget?

19 A. No.

20 Q. Did MCHC play any role in setting  
21 MCHA's budget?

22 A. They approved the budget as  
23 shareholder.

24 Q. Do you know what the legal process was  
25 through which MCHC approved the budget as

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2 shareholder?

3 A. MCHA prepared the budget that was done  
4 in the finance and accounting department, working  
5 with all of the department heads. That budget  
6 then went to the Board of Directors of MCHA, and  
7 then it went to the shareholder, MCHC, for final  
8 approval.

9 Q. Okay. The final approval step that  
10 you just mentioned, where you said that the budget  
11 went to MCHC as the shareholder, was there a  
12 particular individual that it was directed  
13 towards?

14 A. That person varied over time. I  
15 recall Mr. Date being responsible when I -- oh,  
16 are you asking about when I was president or  
17 general counsel?

18 Q. You can start with the general counsel  
19 position, please.

20 MS. GUERON: The entire time period?

21 A. Yeah, I don't know. I don't know who  
22 it was.

23 Q. Okay. So Mr. Date was one of the  
24 individuals that was acting in a shareholder  
25 approval role, correct?



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2 A. He was on the board of MCHA, and  
3 represented the shareholder for budget purposes  
4 when I was president.

5 Q. What was Mr. Date's first name?

6 A. Hide -- I'm sorry.

7 Q. Can I help you?

8 A. Yes.

9 Q. Was it Hidefumi?

10 A. Yes, it was. Thank you.

11 Q. Are there any other individuals that  
12 you can recall performing that role that Mr. Date  
13 performed?

14 A. I believe that before it was Mr. Date,  
15 it was Mr. Kosakai.

16 Q. Do you know Mr. Kosakai's first name?

17 A. I don't recall.

18 Q. If at any point it comes to your  
19 recollection, will you please let me know?

20 A. Yes, I will.

21 Q. Okay. Thank you.

22 Was there an individual at MCHJ named  
23 Ken Fujiwara?

24 A. Yes.

25 Q. What was his role?

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2 MS. GUERON: Objection.

3 Q. Do you know what his role was?

4 A. At what point in time?

5 Q. So, let's try to confine the responses  
6 to the period from 2014 forward, unless you can't  
7 do that, in which case, please explain.

8 A. I believe, in 2014, he was the head of  
9 the legal department in Tokyo. I do not recall  
10 his title at the time.

11 Q. To your knowledge, was he employed by  
12 MCHC?

13 A. I do not know.

14 Q. To your knowledge, was he employed by  
15 MCHJ?

16 A. I do not know.

17 Q. During your tenure as president of  
18 MCHA, are you aware of any employees at MCHA  
19 being -- sorry, receiving compensation from any  
20 other entity?

21 A. All employees of MCHA were compensated  
22 by MCHA.

23 Q. I asked you something slightly  
24 different, so let me clarify.

25 A. Okay.

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2 Q. What I'm asking you about is, in  
3 addition to compensation that MCHA employees  
4 received from MCHA, during your tenure as  
5 president, were you aware of any of those  
6 employees receiving compensation from some other  
7 entity other than MCHA?

8 A. How do you define compensation?

9 Q. Something of financial value.

10 A. So, when ex-pats were assigned from an  
11 entity in Japan to work in the United States, they  
12 had various arrangements with their -- their  
13 transferring company, depending on their  
14 circumstances. Their salary was paid by MCHA.

15 Q. Okay. So for example, during your  
16 time as president of MCHA, were there any Japanese  
17 ex-pats assigned to MCHA?

18 A. Yes.

19 Q. Did that number change -- the number  
20 of them, did that change over time during your  
21 tenure as president?

22 A. Not dramatically.

23 Q. Approximately how many individuals are  
24 we talking about?

25 A. I want to say a half dozen. It could

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2 have been more.

3 Q. Are you able to identify any of those  
4 individuals?

5 A. Yes. Shin Iguchi.

6 Remind me, are you asking when I was  
7 president?

8 Q. Yes.

9 A. Shin Iguchi. Prior to him, it was  
10 Kohei Ichia. Harry Fukasawa. There were others  
11 who supported IT in Virginia under Mr. Fukasawa,  
12 whose names I don't recall. And then we had  
13 trainees, including Maikoo Usami. And at least  
14 one other in accounting. I -- I don't recall  
15 names right now.

16 Q. Okay. If it comes to mind, please let  
17 me know.

18 When you refer to Shin Iguchi, is that  
19 the same person as Shin?

20 A. Yes.

21 Q. And just for clarity, in Japan, is it  
22 a common --

23 MR. BERMAN: Withdrawn.

24 Q. Are you generally familiar with  
25 Japanese culture?

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2 A. Yes, I am.

3 MS. GUERON: Objection.

4 Q. In your experience working for MCHA,  
5 was it common practice to affix the word "san" to  
6 someone's surname?

7 A. If we -- yes, it was common.

8 Q. So in the case where somebody's name  
9 had the word "san" after it, is that effectively  
10 the equivalent to "mister" here?

11 A. Yes, it is.

12 Q. Thank you. I think earlier you  
13 mentioned that you supervised internal audit; is  
14 that correct?

15 A. Yes. For a time.

16 Q. Did that time include when you were  
17 president?

18 A. No.

19 Q. So it was just --

20 A. Oh, I'm sorry. Yes. Yes.

21 Q. So, as president, you supervised  
22 internal audit?

23 A. Yes.

24 Q. Was there a particular person  
25 responsible for that function under your

1 D. Costa - Confidential

2 supervision?

3 A. Ryan Connors.

4 Q. How do you spell the last name?

5 A. C-O-N-N-O-R-S.

6 Q. What was that person's role?

7 A. He was responsible for the internal  
8 audit function for the companies in the Americas,  
9 and he had Katherine Todarello reporting to him,  
10 and he supported internal audit outside the  
11 Americas as well.

12 Q. In connection with performing that  
13 function, was Mr. Connors required to travel?

14 A. Yes.

15 Q. Where was he required to travel to?

16 A. To all the affiliate companies that he  
17 was auditing -- or I shouldn't say all. To many  
18 of the affiliate companies that he was auditing.

19 Q. Were any of those in Japan?

20 A. I don't specifically recall him  
21 auditing an entity in Japan.

22 Q. Okay. Do you know the roles of the  
23 people Mr. Connors was coordinating with outside  
24 of MCHA?

25 A. He worked with the internal audit

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2 function in Europe, he worked with the internal  
3 audit function for Asia-Pacific, and he worked  
4 with the internal audit function for Japan.

5 Q. So do you know whether he traveled to  
6 Japan in connection with the internal audit  
7 function for entities in Japan?

8 A. He traveled to Japan for meetings. I  
9 do not recall him traveling to Japan to engage in  
10 audits.

11 Q. Do you know whether Mr. Connors went  
12 to Japan more than once during your tenure as  
13 president?

14 A. He did.

15 Q. Do you know approximately how many  
16 times?

17 A. I do not.

18 Q. On the occasions of Mr. Connors'  
19 travel to Japan, how would you learn that he  
20 intended to go there?

21 A. I'm not sure what your question is.  
22 He told me.

23 Q. So he decided to go?

24 A. It --

25 MR. VALLI: Objection.

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2 A. It -- it was -- I was going to say  
3 assume. I'm not going to assume. I don't know.

4 Q. So, during the time when you were  
5 president and you were supervising Mr. Connors, he  
6 would tell you that he intended to travel to  
7 Japan; is that right?

8 A. Sometimes I would tell him to travel  
9 to Japan. Sometimes he would tell me there was a  
10 meeting he was going to attend in Japan.

11 Q. Okay. Did Mr. Connors require your  
12 approval in order to travel to Japan?

13 A. Yes.

14 Q. Did he require anyone else's approval  
15 in order to travel to Japan?

16 MS. GUERON: Objection.

17 A. No.

18 Q. During your tenure as president of  
19 MCHA, did you sit on any Boards of Directors?

20 A. Yes.

21 Q. Which ones?

22 A. I was president of Qualicaps, Inc.,  
23 which was a global company headquartered in Japan,  
24 and I sat on the boards of a number of other  
25 affiliate companies.



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2 Q. And that was concurrent with your role  
3 as president, right?

4 A. Yes.

5 Q. Did you receive separate compensation  
6 for your participation in the Boards of Directors  
7 of any of these entities?

8 A. No.

9 Q. How did it come to be that you were  
10 appointed to the board of Qualicaps?

11 MS. GUERON: Objection.

12 A. A Mr. Siuki (phonetic) in Japan felt  
13 like that company and board needed to be  
14 professionalized, and he asked me to join the  
15 board.

16 Q. Was Mr. Siuki an executive at  
17 Qualicaps?

18 A. He was on the board of Qualicaps.

19 Q. I'm sorry, did I get this correct that  
20 he invited you?

21 A. Yes.

22 Q. And you were invited to join the board  
23 of Qualicaps? Were you required to inform anyone?

24 A. I -- I -- no, I wasn't.

25 Q. During your tenure as president of

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2 MCHA, were you permitted to join Boards of  
3 Directors of companies without obtaining any  
4 approval from your own board?

5 MS. GUERON: Objection.

6 A. Just to be clear, the companies I was  
7 referring to were all Mitsubishi affiliates.  
8 These were not outside boards. I did not need to  
9 obtain permission. I did sit on one outside  
10 board, and I did need permission to do that.

11 Q. What was the outside board you were  
12 on?

13 A. MicroSintesis, a biotech company based  
14 in Canada.

15 Q. Whose permission did you need?

16 A. I needed -- I do not recall who I  
17 spoke to.

18 Q. Do you recall the role of the person  
19 that would have been responsible for approving  
20 that appointment?

21 A. I'm thinking it was a board member of  
22 MCHA, but I do not recall.

23 Q. Did you require shareholder approval?

24 A. I did not directly seek shareholder  
25 approval.

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2 Q. During your tenure as president of  
3 MCHA, did you report to the Board of Directors of  
4 any other affiliated entity?

5 A. Can you give me that question again?

6 MR. BERMAN: Can you read it back,  
7 please.

8 (Whereupon, the requested question was  
9 read back by the reporter.)

10 A. No, I did not.

11 Q. During your tenure as general counsel,  
12 did you report to the Board of Directors of any  
13 affiliated entity besides MCHA?

14 A. Only in my capacity as general  
15 counsel. Not in a reporting sense, but I reported  
16 to them on the work I did.

17 I think I answer to your question --  
18 I'm sorry -- is no, I did not report to any Boards  
19 of Directors.

20 Q. So your interactions as a GC with  
21 Boards of Directors outside of MCHA, if any, would  
22 have been in your capacity as a legal advisor?

23 A. Correct.

24 Q. Okay.

25 A. Unless I was on the board, and I'm now

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2 recalling I was on a board in Brazil for an entity  
3 there MCPP Brazil, while I was general counsel.

4 Q. Did you seek the approval of anyone  
5 within MCHA in order to accept that appointment?

6 A. My boss at the time, the president,  
7 Mr. Yoshisato.

8 Q. Do you know whether Mr. Yoshisato had  
9 any communications with anyone outside of MCHA  
10 concerning your appointments to the board of MCPP  
11 Brazil?

12 A. He spoke to someone at MCPP. I do not  
13 know if he spoke to anyone else.

14 Q. Okay. During your tenure as general  
15 counsel at MCHA, were you familiar with the  
16 incumbents on the Board of Directors of MCHJ?

17 A. No.

18 Q. Were you familiar with the incumbents  
19 on the Board of Directors of MCHC?

20 MS. GUERON: Objection.

21 A. The Board of Directors of MCHC? Yes.

22 Q. Did you have any interactions in your  
23 role as general counsel at MCHA with Board of  
24 Directors members of MCHC, other than in your  
25 capacity as a provider of legal services?

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2 THE WITNESS: Give me that question  
3 again.

4 (Whereupon, the requested question was  
5 read back by the reporter.)

6 A. Yes.

7 I -- I don't know how to answer that  
8 question, actually. The question doesn't line up  
9 perfectly for me.

10 Q. Okay. Is there something wrong with  
11 the question that makes it unclear?

12 A. I'm not saying the question -- well,  
13 you used the word general counsel twice, in the  
14 first clause and in the second clause, and I'm not  
15 sure how to distinguish between the two.

16 Q. Okay. So, with respect to the  
17 question, let me try it again. I'm identifying  
18 the time period as during your tenure in the  
19 general counsel position.

20 During that time period, did you have  
21 any interactions with the Board of Directors of  
22 MCHJ that were outside of your provision of legal  
23 services?

24 A. I had no contact with the board of  
25 MCHJ.

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2 Q. During your tenure as general counsel  
3 at MCHA, were you familiar with the job duties of  
4 MCHJ's president?

5 A. No.

6 Q. Before you were hired at MCHA, or the  
7 predecessor company, right, you told me earlier it  
8 was predecessor when you first joined, correct?

9 A. It was MCA.

10 Q. Before you were hired at MCA, were you  
11 provided with a job description of the job that  
12 MCA was looking to fulfill?

13 A. Yes.

14 Q. Have you ever seen a job description  
15 of the general counsel role at MCHA?

16 A. I don't recall.

17 Q. Do you know if there was a job  
18 description of the general counsel position at  
19 MCHA --

20 MS. GUERON: Objection.

21 Q. -- during your time at MCHA?

22 MS. GUERON: Objection.

23 A. There came a time when a job  
24 description was created.

25 Q. Can you identify for me when that time

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2 was?

3 A. I can't.

4 Q. Can you give me a year?

5 A. It was after I became president.

6 Q. Are you familiar with that job  
7 description?

8 MS. GUERON: Objection.

9 A. No.

10 Q. Would you be able to recognize it if I  
11 showed it to you?

12 A. Maybe.

13 Q. At the time that you became president  
14 of MCHA, were you aware of any other females that  
15 were incumbent in the rank of executive at any  
16 Mitsubishi-related entities?

17 MS. GUERON: Objection.

18 THE WITNESS: So, read that back to  
19 me, please.

20 (Whereupon, the requested question was  
21 read back by the reporter.)

22 MS. GUERON: Objection.

23 A. There was a president of an entity in  
24 Europe who was a woman. I cannot think of anyone  
25 else.

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2 Q. Do you know what entity it was?

3 A. I don't recall the name. It was one  
4 of the MC -- Europe group companies.

5 Q. Do you recall the name of the  
6 president?

7 A. No.

8 Q. How long was your career at  
9 Mitsubishi?

10 A. 22 years.

11 Q. During your 22 years, other than that  
12 woman you just described, and other than yourself,  
13 are you aware of any other female executives?

14 A. There were a number of women named  
15 into various executive positions in -- towards the  
16 end of my tenure. I do not recall prior to that.

17 Q. When you refer to the end of your  
18 tenure, do you have any particular period of time  
19 in mind?

20 A. I recall specifically the three years  
21 that I was president. Prior to that time, I  
22 didn't have complete knowledge of all of the  
23 400-plus Mitsubishi entities and who their  
24 executives were.

25 MR. BERMAN: Let's go off the record.



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2 (Whereupon, a discussion was held off  
3 the record.)

4 MR. BERMAN: Back on the record.

5 Q. Ms. Costa, during the time period of  
6 approximately January 1 of 2020, what was your  
7 position at MCHA? Were you still there?

8 A. January 1, 2020? No.

9 Q. When did you depart the company?

10 A. April 1 -- or March 31, 2018.

11 Q. March 31, 2018?

12 A. Yes.

13 Q. Was your departure voluntary?

14 A. Yes.

15 Q. Where did you move on to?

16 A. I am -- not to -- not to a company.  
17 Not to another company.

18 MR. BERMAN: I'm going to have the  
19 court reporter mark an exhibit for you to  
20 review.

21 (Plaintiff's Exhibit 1, document Bates  
22 stamped DEF 000866, MCHA Organization, dated  
23 January 1, 2020, confidential, one page,  
24 marked for Identification, as of this date.)

25 Q. Ms. Costa, are you looking at the

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2 document?

3 A. Yes.

4 Q. So, I'm going to identify the document  
5 for the record. This is a document produced by  
6 defendants Bates stamped DEF 000866. It's a  
7 one-page document bearing the header MCHA  
8 Organization.

9 Ms. Costa, I direct your attention to  
10 the top right corner where it has a date of  
11 January 1, 2020.

12 MR. BERMAN: And please mark this  
13 portion of the transcript confidential.

14 Q. Does this document accurately reflect  
15 the organizational structure of MCHA during your  
16 tenure as president?

17 MS. GUERON: Objection.

18 Do you mean the people or the  
19 structure?

20 MR. BERMAN: Let's start with the  
21 structure.

22 A. In part.

23 Q. Are there any material differences  
24 between this structure and the structure that was  
25 in place when you were president?

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2 A. It looks similar.

3 Q. During your tenure as president, was  
4 there an org chart of this nature?

5 A. There were org charts, yes.

6 Q. So you possessed org charts, as  
7 president, for example?

8 A. Yes.

9 Q. Were there any material differences  
10 between the most recent org chart at the end of  
11 your tenure and this one?

12 MS. GUERON: Objection.

13 A. I don't recall specifically. If you  
14 ask me a specific question, I'm happy to answer.

15 Q. Okay.

16 A. But I've never seen this before, and I  
17 don't know how many differences there might be.

18 Q. During your tenure as president, there  
19 was a tax department?

20 A. Correct.

21 Q. And there was an internal audit and  
22 control department?

23 A. Correct.

24 Q. And there was a legal and compliance  
25 department?

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2 A. Correct.

3 Q. And there was a finance and accounting  
4 department?

5 A. Correct.

6 Q. And there was an IT department?

7 A. Correct.

8 Q. During your tenure as president, was  
9 there also a CEO?

10 A. There was not a CEO, no.

11 Q. Was there ever a CEO during any time  
12 with your tenure at MCHA?

13 A. No, there was not.

14 Q. Okay.

15 A. Not that I recall.

16 Q. Are you aware of any business  
17 discussions, in other words, non-legal discussions  
18 concerning whether MCHA should have a CEO?

19 A. No.

20 Q. During your tenure as president, was  
21 there an office manager?

22 A. Yuka Matsugu was there, yes.

23 Q. Was there an administrative assistant  
24 to the office manager?

25 A. No, there was not.

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2 Q. All right. Looking at the personnel  
3 on this org chart, are there any names on here  
4 that you don't recognize?

5 A. Um...

6 Q. To make it easier, maybe you could  
7 just go from left to right or right to left.

8 A. Yeah. I started on the right.

9 IT looks effectively the same,  
10 although I think there were some individuals that  
11 are different. Finance and accounting is  
12 different, it's different individuals. Legal and  
13 compliance has some of the same and some  
14 different. Internal audit, same thing, some same,  
15 some different. Tax is mostly the same, one  
16 different.

17 Q. Okay. Let's start with tax.  
18 Who's different?

19 A. I don't know Paul Fury.

20 Q. Do you know if there was a different  
21 senior manager of tax during your tenure as  
22 president?

23 A. There was a woman who was in the tax  
24 group at some point. I do not know if it was that  
25 role.

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2 Q. With respect to internal audit, are  
3 there any individuals that are different?

4 A. Yes. During my time, it was Brian and  
5 Katherine and there was an ex-pat trainee whose  
6 name I don't recall. Lee Denton and Stephen  
7 Nallen are new.

8 Q. Do you know whether there were  
9 different internal control manager and specialist  
10 during your tenure?

11 A. There was not. That's a new role that  
12 was discussed prior to my leaving, but was not yet  
13 filled.

14 Q. Okay. With respect to legal and  
15 compliance, do you see at the top there you've got  
16 Nicholas Oliva, correct?

17 A. Yes.

18 Q. And he was still the GC and CCO when  
19 you departed, correct?

20 A. Correct.

21 Q. And CCO stands for what?

22 A. Chief compliance officer.

23 Q. During your tenure as president, was  
24 Kathryn Roche there?

25 A. Yes, she was.

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2 Q. Was she an assistant GC?

3 A. Yes.

4 Q. Did she practice intellectual property  
5 law?

6 A. Among other things, yes.

7 Q. So that was the same?

8 A. Yes.

9 Q. Was Joseph Sherinsky there?

10 A. Yes.

11 Q. Was he in the same role?

12 A. I do not remember if he was senior  
13 counsel at the time, and I believe his designation  
14 was IP, and that litigation was later added, which  
15 may or may not have been before I left.

16 Q. What about legal affairs?

17 A. That's generally the title given to a  
18 trainee from Mitsubishi. It was not Takahisa Oda  
19 at the time.

20 Q. When you say a trainee from  
21 Mitsubishi, when you say Mitsubishi, what are you  
22 referring to?

23 A. The entity that sends the person  
24 changes. It varies. It could be someone from  
25 Pharma, it could be someone from NCC, it could be

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2 someone from MCHJ. I have no idea about Oda-san.

3 Q. So would those be considered  
4 expatriates?

5 A. Yes.

6 Q. And I'm spelling it differently. It's  
7 not patriot, P-A-T-R-I-O-T. It's P-A-T-R-I-A-T-E.

8 When expatriates from the affiliates  
9 were appointed to do a tour of duty in America, do  
10 you know whether they retained their  
11 non-compensatory benefits in their country of  
12 origin?

13 MS. GUERON: Objection.

14 Q. By that, I'll just clarify further.

15 A. Yes, please.

16 Q. I'm referring to pension benefits,  
17 health insurance, anything of that nature.

18 MS. GUERON: Objection.

19 A. There were some benefits that may have  
20 been retained.

21 Q. In those instances, was MCHA charged  
22 any fee in connection with supporting those  
23 benefits?

24 MS. GUERON: Objection.

25 A. My recollection is MCHA paid for



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2 salary, bonuses and benefits in the United States.

3 Q. Okay. So as far as you know, there  
4 was no contribution for benefits that weren't  
5 derived from the U.S.?

6 A. I do not recall.

7 Q. During your tenure as president, was  
8 Stephen Rose there?

9 A. Yes.

10 Q. Same role?

11 A. I don't recall what his title was when  
12 I left.

13 Q. Was Sheri Pardo there?

14 A. Yes.

15 Q. Same role?

16 A. Again, I don't recall what her title  
17 was.

18 Q. Was Kelli Troccoli there?

19 A. Yes.

20 Q. Same role?

21 A. It looks like it.

22 Q. Did you tell me Yuen Kobayashi, did  
23 you mention him before?

24 A. No. I think Yuen is a woman, but Yuen  
25 was not there.

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2 Q. Do you know if that's a new position?

3 A. It -- I don't recall.

4 Q. In connection with this litigation,  
5 have you reviewed any of the discovery demands  
6 issued by the plaintiff?

7 A. I have reviewed -- I think at the very  
8 beginning, I reviewed them, yes. I haven't  
9 reviewed them recently.

10 Q. Did you have in your personal  
11 possession custody or control of any documents  
12 that plaintiff demanded production of?

13 A. I had very, very little. What I had,  
14 I turned over to counsel.

15 Q. Okay. And when you say you turned  
16 them over to counsel, you mean counsel sitting  
17 next to you here today?

18 A. I mean Gordon Rees. Mercedes Colwin.

19 Q. So you turned them over to counsel for  
20 MCHA?

21 A. And me. They represent me as well.

22 Q. Okay. That's fine.

23 Did you have any org charts in your  
24 possession at that time?

25 A. I don't recall, but it's unlikely.

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2 Q. Did you assist in the preparation of  
3 MCHA's responses to our discovery demands?

4 A. I --

5 MS. GUERON: Just yes or no, because  
6 of privilege issues.

7 A. Did I assist? Yes.

8 Q. Did you assist counsel for MCHA in  
9 identifying the locations where responsive  
10 documents could be found?

11 MS. GUERON: Hold on a second.

12 MR. BERMAN: Could you read that back,  
13 please.

14 (Whereupon, the requested question was  
15 read back by the reporter.)

16 MS. COLWIN: I'm going to table that.

17 RL MR. BERMAN: Okay. Please mark that  
18 question.

19 MS. COLWIN: So we have two questions.

20 MR. BERMAN: Thank you.

21 RQ I'm going to call for the production  
22 of any org charts that were in the care,  
23 custody and control of Ms. Costa during her  
24 tenure as general counsel or president,  
25 because we only have this one which is after

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2 she left the company.

3 MS. COLWIN: Taken under advisement.

4 MR. BERMAN: Thank you.

5 MS. COLWIN: Matt, you're going to  
6 send a letter afterwards?

7 MR. BERMAN: We can send a document to  
8 memorialize it, but we've already demanded  
9 these documents in our discovery demands.

10 Q. With respect to finance accounting, do  
11 any of these positions look new to you?

12 A. I believe Yuko Shaw might have been  
13 there, and Sakaya Matsuyama was there. The other  
14 individuals, I believe are new, but in previously  
15 existing positions. Margaret might have been  
16 there, actually.

17 Q. During your tenure as president, was  
18 there any turnover in the tax group?

19 A. Um...

20 Q. I'm only asking about your time as  
21 president.

22 A. Yeah, I know.

23 Konstantin was new. Jeff and Esther  
24 had been there for years.

25 Q. With respect to Konstantin, were you

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2 responsible for setting his compensation?

3 A. Jeff Kuropatkin proposed the  
4 compensation, and I approved it.

5 Q. Did you require any other approvals?

6 A. No.

7 Q. Were there any new personnel in  
8 internal audit and control?

9 A. Not during that time, no.

10 Q. During your tenure as president, did  
11 the staffing of the legal and compliance  
12 department change?

13 A. Sheri Pardo was hired.

14 Q. Did you play any role in hiring  
15 Ms. Pardo?

16 A. I don't recall if I interviewed her or  
17 not.

18 Q. Was that a new position?

19 A. That was a new position, yes.

20 Q. Were you involved in the decision to  
21 create that new position?

22 A. Yes.

23 Q. What was your role in that process?

24 A. Nick Oliva proposed to me that the  
25 company bring on an employment counsel position,

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2 and I approved it.

3 Q. Was there a business need that you  
4 recognized for an employment law counsel at that  
5 time?

6 A. Yes, there was.

7 Q. Are you able to articulate that  
8 without divulging any privileged information?

9 A. I do not recall specifically what may  
10 have led to that hiring.

11 Q. Do you know what this employee was  
12 tasked with upon hire?

13 A. She was responsible for employment law  
14 matters throughout the group, including pharma.

15 Q. Do you know how Ms. Pardo was selected  
16 for this position?

17 A. I don't recall.

18 Q. Do you know whether MCHA looked for  
19 any internal candidates for that position?

20 A. Within the legal department?

21 Q. Yes.

22 A. The need was recognized to increase  
23 the size of the legal department.

24 Q. So, obviously, if you're increasing  
25 the size, you can't look for within, you're just

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2 going to move the opening from one spot to  
3 another, right?

4 MS. COLWIN. Objection to form.

5 MR. BERMAN: Withdrawn. Let's move  
6 on.

7 Q. Did you consider any candidates from  
8 other Mitsubishi entities to fill the slot?

9 A. No. There were no U.S. lawyers  
10 located outside of the MCHA legal department who  
11 would have been qualified.

12 Q. Okay. What qualifications were needed  
13 to fill this position?

14 A. I don't recall what the job  
15 description looked like.

16 Q. Other than whatever was in the job  
17 description, would there be any other  
18 qualifications?

19 A. Nick oversaw that hiring. I don't  
20 know the details.

21 Q. Do you know whether a job description  
22 was, in fact, prepared for that role?

23 A. I don't recall.

24 Q. During your tenure as president, did  
25 you hire any other legal positions other than this

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2 one?

3 A. There were hirings in New Jersey at  
4 Pharma but not in New York.

5 Q. So when you refer to Pharma, is that a  
6 different Mitsubishi affiliate?

7 A. It is a different affiliate, but at  
8 one legal department.

9 Q. So that person was under your  
10 supervision in your role as general counsel?

11 A. So, all legal services to the Pharma  
12 entities that we discussed earlier were provided  
13 by members of the MCHA legal department.

14 Q. But some of them were not seated in  
15 the same office that you were in, correct?

16 A. Correct. And this chart accurately  
17 reflects that we had people located in New York,  
18 Virginia and New Jersey.

19 Q. And that's what the colors reflect on  
20 this chart, right?

21 A. That's correct.

22 Q. That looks accurate to you?

23 A. I don't know about these individuals,  
24 but, in general, yes.

25 MS. COLWIN: Which individuals,



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2 Ms. Costa? Just identify which ones.

3 THE WITNESS: The four people colored  
4 in green under legal and compliance.

5 MS. COLWIN: Thank you.

6 Q. During your tenure as general counsel,  
7 was there any standard procedure that was used to  
8 select candidates for open attorney positions?

9 A. It was something that I addressed on a  
10 case-by-case basis. We did not have that much  
11 hiring, so it was done case by case. And the same  
12 was true for the hirings done by Nick Oliva while  
13 I was the president.

14 Q. Did you post any of the open positions  
15 that you were seeking to fill for external  
16 candidates?

17 A. What are you referring to?

18 MS. GUERON: Objection.

19 Q. Well, you said that you had more than  
20 one legal position that you had to fill while you  
21 were general counsel, correct?

22 A. Yes. Between 1996 and 2015, yes.  
23 Correct.

24 Q. Were any of those openings posted?

25 MS. GUERON: Objection.

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2 A. By posted, you mean posted where?

3 Q. Were any of those positions publicized  
4 in any way that would draw the attention of  
5 qualified candidates to the fact that there was an  
6 open position?

7 A. Yes.

8 Q. And how was that done?

9 MS. GUERON: Objection.

10 A. It varied case to case.

11 Q. Well, what are some of the methods  
12 that you can think of that were utilized?

13 A. I used legal recruiters for most of  
14 the positions. In the case of at least one, I  
15 used Axiom.

16 Q. Have you completed your response or  
17 are you still thinking?

18 A. I -- that's it for now.

19 Q. Is Axiom a placement agency?

20 A. No. Axiom -- I'm going to get their  
21 branding wrong, but they are an organization that  
22 contracts out in-house legal services to  
23 corporations.

24 Q. Those in-house legal services, are  
25 those provided by interim personnel?

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2 MS. GUERON: Objection.

3 A. I -- yes, except in the case where I  
4 hired one permanently. I used Axiom on a number  
5 of occasions.

6 Q. Who was hired permanently?

7 A. Gregory Peterson.

8 Q. Can you identify which legal  
9 recruiters you used?

10 A. When I hired Jennifer, I used Sandy  
11 Friedman at PeterSan. I think that's the only  
12 time I used that firm. I do not remember who I  
13 used previously. I later used Major, Lindsey &  
14 Africa.

15 Q. Do you recall why you selected Major,  
16 Lindsey & Africa?

17 A. I thought they were really good.

18 Q. On the occasions where you used legal  
19 recruiters, how did you identify for them, or did  
20 you identify for them what criteria you were  
21 looking for?

22 A. I always created a job description.

23 Q. Other than the job description, did  
24 you identify any other criteria?

25 A. I always spoke to them one on one, and

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2 explained what I wanted, yes.

3 Q. Okay. Did you identify any criteria  
4 in terms of the particular backgrounds of the  
5 individuals that you were looking to hire?

6 A. Yes.

7 Q. What types of things did you identify  
8 that you were looking for?

9 MS. COLWIN: Objection.

10 MS. GUERON: Objection.

11 Q. What criteria did you identify?

12 MS. GUERON: Objection.

13 A. It depended on the role. I identified  
14 criteria that was specific to the needs we had and  
15 the role I was hiring for.

16 THE WITNESS: I do need to stop within  
17 ten minutes. I'm sorry. I have a small  
18 window. So --

19 MR. BERMAN: You just let me know  
20 when, and we'll stop immediately.

21 THE WITNESS: We can stop now, or  
22 within ten minutes.

23 MR. BERMAN: All right. Let's go for  
24 ten more minutes, but let me know when we're  
25 like getting towards the end of that. Okay?

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2 MS. GUERON: Okay.

3 MR. BERMAN: I'm going to show you  
4 what we'll mark as Exhibit 2.

5 (Plaintiff's Exhibit 2, a two-page  
6 document bearing Bates stamp DEF 001592 to  
7 001593, confidential, marked for  
8 Identification, as of this date.)

9 MR. BERMAN: I'll identify for the  
10 record that Exhibit 2 is a two-page document  
11 bearing Bates stamp DEF 001592 to 93.

12 Q. Ms. Costa, are you looking at the  
13 document?

14 A. Yes.

15 Q. Have you seen this before?

16 A. Yes.

17 Q. Have you --

18 A. I can't be certain that I've seen this  
19 document before.

20 Q. Have you seen a position profile  
21 comparable to this one previously?

22 A. Generally, yes.

23 Q. So when you described providing a job  
24 description to recruiters, were you referring to  
25 something along the lines of this?

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2 A. I know this document was created  
3 later. Whenever I did a search, I created a job  
4 description, together with the recruiter I was  
5 working with.

6 Q. Okay. For the positions that you were  
7 looking to fill, did you create a file for that  
8 opening?

9 MS. GUERON: Objection.

10 A. I don't recall.

11 Q. Do you recall recruiting for the  
12 position that you ultimately filled with  
13 plaintiff's hire?

14 A. Yes.

15 Q. Did you use a recruiter for that  
16 position?

17 A. No.

18 Q. How did you go about recruiting for  
19 that position?

20 A. We didn't recruit for that position.  
21 We made a decision to promote Jennifer.

22 Q. I'm sorry. Maybe my questioning  
23 wasn't clear. I was referring to when  
24 Ms. Fischman was initially hired by the company.

25 A. Oh. I used PeterSan.

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2 Q. When you used PeterSan, did you open  
3 any kind of file in your office for that selection  
4 process?

5 MS. GUERON: Objection.

6 A. I probably had one at the time, and  
7 probably got rid of it at some point after the  
8 hire was complete.

9 Q. So it wasn't your practice to retain  
10 the selection files for positions that you filled  
11 during your tenure as general counsel?

12 MS. GUERON: Objection.

13 A. It wasn't.

14 Q. During your tenure as general counsel,  
15 did you have any kind of document retention  
16 policy?

17 MS. GUERON: Objection.

18 A. The company had a document retention  
19 policy.

20 Q. Are you familiar with its terms?

21 A. Not as I sit here, no.

22 Q. Do you know what period of time the  
23 company's retention policy called for documents to  
24 be retained for?

25 A. What I recall is the document was two

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2 or more pages long, and it set different time  
3 limits for different types of documents, and I  
4 cannot tell you what it was for any category of  
5 documents.

6 Q. So do you know if there's any written  
7 record of other candidates who were considered for  
8 the selection that ultimately Ms. Fischman was  
9 staffed in?

10 MS. COLWIN: Objection.

11 A. Can you give me that one again?

12 MR. BERMAN: Can you read it back,  
13 please.

14 (Whereupon, the requested question was  
15 read back by the reporter.)

16 A. In 2008?

17 Q. At her original point of hire, yes,  
18 her first point of hire.

19 A. I'm not aware that there was any file.

20 Q. Okay. What position was Ms. Fischman  
21 initially hired into?

22 A. Corporate counsel.

23 Q. So if you look at this job description  
24 -- I'll direct your attention to the top -- do you  
25 see where it says corporate counsel?



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2 A. Yes.

3 Q. Is that the same job?

4 A. Um, as it evolved over time.

5 Q. And I know you said that this  
6 particular instance of this document, you believe  
7 it was created sometime after 2008, correct?

8 A. Based on the heading, yes, that's what  
9 I believe.

10 Q. Okay. What about the heading  
11 indicates that to you?

12 A. The cutoff of the top of that top  
13 diamond was -- actually, was sort of a mistake  
14 that got carried over into documents from that  
15 time period.

16 Q. So you're referring to the image at  
17 the top that corresponds to Mitsubishi's corporate  
18 logo; is that correct?

19 A. The logo was cut off, correct.

20 Q. Is that same logo used for multiple  
21 Mitsubishi entities?

22 A. If you mean non-Mitsubishi Chemical  
23 entities? Are you asking me for non-Mitsubishi  
24 Chemical entities?

25 Q. Do you know any other entities besides

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2 Mitsubishi Chemical Holdings Association that uses  
3 that logo?

4 A. The triple diamonds, yes.

5 Q. And, generally speaking, which  
6 entities used that logo?

7 A. There are a range of entities that  
8 derived from the original Mitsubishi corporation,  
9 pre-World War II, that continue to use the three  
10 diamond mark.

11 MS. GUERON: You've got a couple of  
12 minutes left before lunch.

13 THE WITNESS: And that story would  
14 take four hours.

15 MR. BERMAN: We don't need it. It's  
16 okay.

17 (Whereupon, a discussion was held off  
18 the record.)

19 Q. So, you would have provided the  
20 position profile document that existed at the time  
21 to whatever recruiter you were using for your  
22 search, right?

23 A. I do not know how this was used with  
24 recruiters. There was created as an internal  
25 document.

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2 Q. When you were seeking to fill  
3 positions, did you use a position profile similar  
4 to this?

5 A. Again, I can't say similar. I created  
6 one for each position that I hired for.

7 Q. Did it have the same headings in it,  
8 "key responsibilities, experience and  
9 qualifications"?

10 A. It may --

11 Q. Did it have that information?

12 A. It may have.

13 Q. Did you use a template to create it?

14 A. No.

15 Q. Did you use any kind of form to create  
16 it?

17 A. No.

18 Q. Did you seek to fill open positions in  
19 the legal department through any other channel,  
20 other than legal recruiters?

21 MS. GUERON: Objection.

22 A. Nathan Gallup, I hired strictly  
23 through to a search I managed on, I believe it was  
24 LinkedIn.

25 Q. Did you post any of the open legal

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2 positions during your tenure as general counsel on  
3 any job boards?

4 A. I believe one could say that the  
5 Nathan Gallup search was done through a job board.

6 Q. You're referring to LinkedIn?

7 A. Yes.

8 Q. Did you use any other job boards?

9 A. I don't recall.

10 Q. Are you generally familiar with  
11 different job boards?

12 MS. GUERON: Objection.

13 A. I don't know what that means.

14 Q. Okay. You've heard of Monster.com?

15 A. I have not used Monster.com.

16 Q. I just asked if you heard of them.

17 A. Yes, I've heard of them.

18 Q. So you're familiar with the function  
19 that that business uses, correct?

20 A. Yes.

21 MS. GUERON: Objection.

22 Q. So when I say "job board," I'm  
23 referring to something like Monster.com or  
24 Indeed.com or any of the other various companies  
25 that post open positions that applicants can apply

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2 to.

3 Did you ever use any of those types of  
4 job boards to fill open positions in the legal  
5 department?

6 MS. GUERON: Objection.

7 A. LinkedIn is the only one I recall  
8 using as an external job board.

9 MR. BERMAN: Thank you. I think this  
10 is a good time to take that break.

11 THE WITNESS: Okay. Thank you.

12 (Luncheon recess taken 12:58 p.m. to  
13 1:40 p.m.)

14 MR. BERMAN: End of confidential  
15 portion.

16 We're back on the record.

17 Q. Ms. Costa, I want to just circle back  
18 real quick to a couple of things I asked you about  
19 earlier.

20 Do you recall earlier I asked you some  
21 questions about Mr. Connors and internal audit?

22 A. Yes.

23 Q. And you indicated that you supervised  
24 Mr. Connors, correct?

25 A. Correct.

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2 Q. How closely did you direct his work?

3 A. His day-to-day work, I did not direct.

4 His schedule, his approach, his policies, I was

5 involved in.

6 Q. Was he responsible for conducting

7 internal audit of companies outside of MCHA?

8 A. Yes.

9 Q. And that would include various

10 Mitsubishi affiliates?

11 A. Yes.

12 Q. Would those affiliates contact MCHA at

13 the audit department and request internal audits?

14 A. Audits came about through a variety of

15 means.

16 Q. Did any of these entities request that

17 they be audited?

18 A. They -- I'm not aware that anyone

19 requested a self-audit -- an audit of themselves.

20 Q. Can you tell me how entities were

21 selected to receive an internal audit?

22 A. There was a schedule, which I think

23 supposed that companies got audited every three

24 years. So, by looking at when the past audit had

25 occurred, that was one way.

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2 Another way was, after we purchased a  
3 company, we tried to do an audit within six  
4 months. Another way was, if issues came up in an  
5 audit that suggested a revisit in less than three  
6 years was appropriate, that would tried to be  
7 scheduled.

8 And sometimes it came from any one of  
9 a number of areas. So, for example, when I was  
10 general counsel, quite a few audits were done at  
11 my request, because I learned of something in my  
12 role as general counsel that I thought warranted  
13 an audit, and I would speak to Brian about, again,  
14 trying to fit it into the schedule.

15 Q. Can you give me an example of a  
16 circumstance that took place where you requested  
17 an internal audit that Brian conducted?

18 MS. GUERON: Objection.

19 MR. FORTINSKY: Objection. That may  
20 be privileged.

21 MS. GUERON: Exactly.

22 Q. On any of the occasions where you  
23 described that the request for an audit originated  
24 with you, was your request for the execution of an  
25 internal audit on behalf of MCHA?

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2 MS. COLWIN: Can you read that back.

3 (Whereupon, the requested question was  
4 read back by the reporter.)

5 A. Yes.

6 Q. Was it on behalf of one of MCHA's  
7 clients?

8 A. Yes.

9 Q. So, when you requested an audit of one  
10 of MCHA's clients, were you acting in your  
11 capacity as an attorney?

12 A. Yes.

13 Q. Did you make any such requests while  
14 you were president?

15 A. I don't recall, because my role as  
16 president did not leave me to be aware of the same  
17 type of information that compelled me to request  
18 the audits as general counsel.

19 I would say I -- there may have been  
20 times, if we did a recent acquisition, where I  
21 would have -- the request would have come from me,  
22 but I have no specific recollection.

23 Q. With respect to your testimony that  
24 you wouldn't be privy to the same types of  
25 information in the role of president, when you



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2 were appointed the president, didn't you at all  
3 times have a general counsel that reported to you?

4 A. Yes.

5 Q. And wouldn't that general counsel be  
6 responsible for apprising you of the information  
7 necessary to conduct the affairs of the internal  
8 audit department?

9 A. Yes.

10 Q. So, did you actually have the  
11 information necessary to request internal audits,  
12 if they were needed?

13 MS. GUERON: Objection.

14 MS. COLWIN: Objection.

15 A. At times, yes.

16 Q. You mentioned that, after purchases, I  
17 think you used the words, we tried to audit -- I  
18 think you said in six months after a purchase.

19 Did I get that right?

20 A. If it was possible, we -- that was our  
21 aim.

22 Q. When you used the pronoun "we," who  
23 were you referring to?

24 A. MCHA and whichever entity made the  
25 acquisition.

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2 Q. Did I understand correctly that you  
3 practiced securities litigation at Cleary?

4 A. It was one of the areas of litigation  
5 that I worked in, yes.

6 Q. For how long did you practice  
7 securities litigation at Cleary?

8 A. It was the '80s and early '90s. It  
9 was peppered throughout.

10 Q. So it was intermittent?

11 A. Yes.

12 Q. As part of your securities litigation  
13 practice of law, were you familiar with quarterly  
14 reports?

15 MR. FORTINSKY: Objection to form.

16 A. I am familiar that public companies  
17 file quarterly reports.

18 Q. And same question with respect to  
19 annual reports.

20 MR. FORTINSKY: Objection to form.

21 A. Yes, I am familiar that public  
22 companies file annual reports.

23 Q. Are you generally familiar with the  
24 contents of each of those reporting types?

25 MS. GUERON: Objection.

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2 A. No.

3 Q. Do you know what goes into a quarterly  
4 report for a public company?

5 A. At this point, no.

6 Q. At the time when you were practicing  
7 law in the '80s and '90s, did you know?

8 MS. GUERON: Objection.

9 A. To an extent.

10 Q. And the same with respect to annual  
11 reports?

12 MS. GUERON: Objection.

13 A. To an extent.

14 Q. Did that include domestic companies?

15 MS. GUERON: Objection.

16 A. By that, do you mean companies listed  
17 on the New York Stock Exchange?

18 Q. Sure.

19 A. I believe so, yes.

20 Q. Did it include foreign companies?

21 A. Yes.

22 Q. Did it include Japanese companies?

23 A. No.

24 Q. Are you familiar with the general  
25 types of financial reports that are presented in

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2 the security filings of public companies during  
3 the time when you were practicing law at Cleary?

4 MS. GUERON: Objection.

5 A. I didn't understand that question.

6 MR. BERMAN: It was a little fast.

7 Could you read it back, please.

8 (Whereupon, the requested question was  
9 read back by the reporter.)

10 A. Only in the most general way.

11 Q. Are you familiar in a general way with  
12 the financial reports that are in 10-Qs?

13 A. Yes.

14 Q. And in 10-Ks?

15 A. Yes.

16 Q. Are you generally familiar with  
17 consolidated financial statements?

18 A. Generally.

19 Q. Do you recall earlier today when I  
20 asked you whether MCHA had any profits during your  
21 tenure?

22 A. Yes.

23 Q. Do you know if any of those profits  
24 were included in the consolidated financial  
25 statements of any other Mitsubishi entity?

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2 A. No.

3 Q. You don't know?

4 A. I don't know.

5 Q. Have you had the opportunity to review  
6 the complaint in this action?

7 A. Yes.

8 MR. BERMAN: Mark this, please.

9 (Plaintiff's Exhibit 3, copy of first  
10 amended complaint, marked for  
11 identification, as of this date.)

12 Q. Plaintiff's Exhibit 3 is a copy of the  
13 first amended complaint filed in this action as  
14 ECF Docket 86.

15 I want to direct your attention to  
16 page 21 of the document. Let me know when you're  
17 there.

18 A. I'm here.

19 Q. Have you reviewed this portion of the  
20 complaint previously --

21 A. I --

22 Q. -- that concerns joint employment  
23 allegations?

24 A. Yes.

25 Q. Do you recognize this chart?

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2 A. Generally, yes.

3 Q. Do you see that there's a reference in  
4 paragraph 95 to a corporate governance report  
5 dated May 31, 2016?

6 A. Yes.

7 Q. During your tenure as MCHA's general  
8 counsel, did you ever review any corporate  
9 governance reports from MCHC?

10 A. No.

11 Q. Do you know whether MCHC requested any  
12 information from you in order to complete its own  
13 corporate governance reports?

14 A. MCHC requested various information  
15 from us from time to time. I do not know what  
16 made it into this report or any other report.

17 Q. Are you aware of any instances where  
18 MCHC specifically noted that it was for the  
19 purpose of inclusion in a corporate governance  
20 report?

21 A. I have no recollection of that.

22 Q. After reading this complaint, did you  
23 review the corporate governance report referenced  
24 in here at paragraph 95?

25 A. No, I did not.

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2 Q. Then do you know, in paragraph --  
3 well, I'll direct your attention to paragraph 96.

4 Do you know whether the paragraph --

5 MR. BERMAN: Withdrawn.

6 Q. Do you know whether MCHC's nominating  
7 committee approves the selection and dismissal of  
8 operating company presidents, excluding listed  
9 subsidiaries?

10 A. I do not.

11 Q. Do you know whether MCHC's management  
12 administration of its subsidiaries includes  
13 setting compensation?

14 A. As to entities other than MCHA, I do  
15 not.

16 Q. With respect to MCHA, what do you know  
17 about this allegation?

18 A. That the MCHC compensation committee,  
19 to my knowledge, was not involved in setting the  
20 compensation for MCHA company presidents.

21 Q. Does that include indirectly?

22 A. I cannot speak to indirectly.

23 Q. Well, for example, earlier today, do  
24 you recall testifying concerning the existence of  
25 legal services agreements?

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2 A. Yes.

3 Q. Do you know whether any of those legal  
4 service agreements had their fee provisions  
5 adjusted based upon the need to compensate  
6 employees that were designated by MCHC?

7 MS. GUERON: Objection. I'm sorry,  
8 can you read that back.

9 (Whereupon, the requested question was  
10 read back by the reporter.)

11 MS. COLWIN: Objection.

12 MR. BERMAN: Let me clarify the  
13 question.

14 Can you just read it back slowly.

15 (Whereupon, the requested question was  
16 read back by the reporter.)

17 MR. BERMAN: I'm going to restate the  
18 question.

19 Q. Do you know whether any of the fee  
20 provisions in the legal services agreements were  
21 adjusted in order to provide for the compensation  
22 of operating company presidents, excluding listed  
23 subsidiaries?

24 MS. COLWIN: Objection.

25 MR. FORTINSKY: Objection.



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2 MS. GUERON: Objection.

3 A. There was no relationship between the  
4 legal service fees charged to clients of MCHA and  
5 compensation paid to operating company presidents.

6 Q. Same question, but with respect to  
7 administrative service agreements.

8 A. Same answer.

9 Q. During your tenure as general counsel,  
10 did MCHC had a legal services agreement with MCHA?

11 A. Yes.

12 Q. Did MCHC have the discretion to  
13 decline to pay the fees identified in the legal  
14 services agreement?

15 A. Yes.

16 Q. Did they ever exercise that  
17 discretion?

18 A. I don't believe so.

19 MS. GUERON: Time frame? Ever?

20 MR. BERMAN: I identified a time frame  
21 already.

22 MS. GUERON: You said "ever."

23 Q. During your tenure as general counsel,  
24 did they ever exercise that discretion?

25 A. Not to my knowledge.

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2 Q. What about during your tenure as  
3 president?

4 A. No.

5 Q. Did they have the discretion to  
6 partially pay the fees listed in the legal  
7 services agreement?

8 A. Every entity, including MCHC, that  
9 entered into an agreement with MCHA was --  
10 negotiated that amount up front, agreed to pay,  
11 and, in fact, did pay.

12 Q. Are you familiar with the composition  
13 of MC -- with respect to your tenure at MCHA, were  
14 you familiar with the composition of MCHC's  
15 management committee?

16 A. Um, I'm not sure what the management  
17 committee refers to.

18 Q. Okay. During your tenure as president  
19 of MCHA, did you have any board level positions at  
20 MCHC?

21 A. I was an executive officer of MCHC,  
22 and, as such, I was on what I believe they  
23 referred to as the executive committee. I'm not  
24 sure what the management committee might be.

25 Q. When you refer to the executive

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2 committee, is that a subcommittee of the Board of  
3 Directors of MCHC?

4 A. No.

5 Q. What is the executive committee?

6 A. It was a subset of the executive  
7 officers of MCHC that met once a month to discuss  
8 various matters relevant to the MCHC group.

9 Q. While you were president at MCHA, you  
10 had these executive committee duties?

11 A. No. Um, being appointed -- oh, yes.  
12 But not because I was president. That was a later  
13 appointment.

14 Q. What was a later appointment?

15 A. As an executive officer of MCHC.

16 Q. So did you concurrently hold the role  
17 of president of MCHA and executive officer of  
18 MCHC?

19 A. During my last year as president of  
20 MCHA.

21 Q. Do you know if any of your  
22 predecessors, as president of MCHA, similarly held  
23 positions at MCHC concurrently?

24 A. Not to my knowledge.

25 Q. Do you know if Mr. Yoshiato was an

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2 executive officer of MCHC during his tenure as  
3 president as MCHA?

4 A. I believe he was not.

5 Q. Do you know the reason why you were  
6 selected as an executive officer of MCHC?

7 MS. GUERON: Objection.

8 A. They communicated to me that they  
9 valued my contribution and wanted to give me that  
10 promotion.

11 Q. So could you just clarify, what did  
12 you do as the promotion?

13 A. Executive officer of MCHC is not a  
14 promotion within MCHA, but is one of the highest  
15 positions you can hold in the group globally. It  
16 is beneath the Board of Directors. The other  
17 members were the CEO of MCHC, the CFO of MCHC, the  
18 CEO of the -- of Pharma, the CEO of LSII. There  
19 were 10 to 12 of us, total. Oh, the CTO of MCHC.  
20 There were 10 to 12 of us, total, in that group.

21 Q. Are you familiar with the term C  
22 suite?

23 A. Yes.

24 Q. So is it to fair to say that all the  
25 members of the executive committee were the C

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2 suite level of one of the affiliates?

3 MR. FORTINSKY: Objection to form.

4 MS. GUERON: Objection.

5 Q. Do you understand the question?

6 A. Yes.

7 They were not C suite of MCHC, but  
8 they were C suite of an MCHC group company, yes.

9 Q. Do you know if any of them had  
10 concurrent roles at multiple entities?

11 A. This was not like a full-time job.  
12 They all had jobs with their entity, and then were  
13 an executive officer of MCHC.

14 Q. So do I understand you correctly that  
15 they concurrently held both roles?

16 MR. FORTINSKY: Objection to form.

17 A. Yes.

18 Q. During the time period where you  
19 concurrently held the executive officer position  
20 and the presidency of MCHA, did you receive an  
21 increase in compensation associated with your  
22 executive officer position?

23 A. I had a contract with MCHC. There was  
24 compensation connected to that role. I do not  
25 remember how it worked in terms of -- I don't

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2 remember how it worked.

3 Q. When you were initially promoted to  
4 the role of president of MCHA, did you request an  
5 employment contract?

6 A. I had an employment contract as  
7 executive vice-president, and, yes, I negotiated a  
8 new contract when I became president.

9 Q. Who was the counterparty to your  
10 contract?

11 A. It was -- it was Shoji Yoshiasato.

12 Q. Was your counterparty an individual or  
13 an entity?

14 A. I believe he signed on behalf of MCHA.  
15 No, not as an individual. I believe he was a  
16 signatory. I don't recall. It was with MCHA.

17 Q. Thank you.

18 And then, when you received the  
19 appointment to the executive officer position, was  
20 that pursuant to an additional contract?

21 A. Yes.

22 Q. Who was your counterparty in that  
23 contract?

24 A. I don't recall.

25 Q. Do you recall the entity?

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2 A. Oh, MCHC.

3 Q. Okay.

4 A. I'm sorry.

5 Q. Was your contract for a fixed term  
6 with respect to the executive committee  
7 appointment?

8 A. Yes. I believe it was year to year.

9 Q. Do I understand you correctly that  
10 that means it was for a one-year term and could be  
11 renewed?

12 A. I don't remember the terms.

13 Q. Okay. Were you in that position for  
14 more than a year?

15 A. No. Because I left MCHA at the end of  
16 one year.

17 Q. How was your compensation structured  
18 under the executive committee contract?

19 MS. GUERON: Objection.

20 MS. COLWIN: Objection.

21 MS. GUERON: Asked and answered.

22 Q. Do you understand what I'm asking you?

23 A. Yeah, I believe I answered it. There  
24 was an amount of money that was designated in  
25 connection with that role, and I do not recall

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2 how -- any of the details beyond that.

3 Q. Do you recall the amounts?

4 A. I don't.

5 Q. Was it a material portion of your  
6 annual compensation for that year?

7 A. No, it was not.

8 Q. I want to direct your attention to  
9 paragraph 107.

10 Do you see there are six individuals  
11 that are named in paragraph 107?

12 A. Yes.

13 MS. GUERON: Take your time to read  
14 the whole paragraph, okay?

15 Q. You can read the entire paragraph.  
16 That's fine. Let me know when you're ready.

17 A. Yes.

18 Q. Do you recognize the names that are  
19 listed here?

20 A. Yes.

21 Q. So, we've already mentioned Ken  
22 Fujiwara, correct?

23 A. Yes.

24 Q. At any point during your tenure at  
25 MCHA, do you know whether he had a dual role?



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2 A. Dual role --

3 MS. GUERON: Objection.

4 Q. Meaning, did he have a role at more  
5 than one Mitsubishi entity at the same time?

6 A. I believe he did.

7 Q. Do you know what those roles were?

8 A. I believe he had appointments at each  
9 of MCHC and MCC at some point in time, and MCHJ &  
10 MCHC. I'm not certain about the second one.

11 Q. With respect to Hidefumi Date, we  
12 mentioned him earlier today, correct?

13 A. Correct.

14 Q. Can you tell me what his role was?

15 A. When I --

16 MS. GUERON: Objection.

17 A. When I left the company, he was CFO.

18 Q. Did he have a different role at some  
19 other point in time during your tenure?

20 A. He -- again, tenure, what period are  
21 we discussing?

22 Q. Your tenure at the company, MCHA.

23 A. As MCHA. He was -- prior to his --

24 MS. GUERON: Wait. That's actually --  
25 do you mean 25 years?

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2 Q. You can explain if the answer changes.

3 I assume he didn't have very many different  
4 positions, but if you need to clarify, just let me  
5 know.

6 What other positions are you aware of  
7 him having during the course of your employment  
8 with MCHA or its predecessor entities?

9 Is that a fair question?

10 A. Yes.

11 So, Mr. Date was in finance and  
12 accounting the entire time I knew him. I first  
13 came to know him when he had an ex-pat assignment  
14 in New York, and we worked closely together. He  
15 subsequently went back to Japan. I don't know  
16 what his roles were specifically, although he  
17 remained in finance and accounting. He eventually  
18 became what was effectively number 2 under the CFO  
19 at the time, and eventually became CFO of MCHC.

20 Q. Okay. Thank you.

21 When he was an ex-pat in New York, was  
22 he assigned to MCHA?

23 A. It might have been a different entity  
24 at the time. Actually, in fact, it was a  
25 different entity at the time; but, yes, that was

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2 his assignment.

3 Q. Do you know which predecessor entity  
4 it was?

5 A. Either MCA or MCUS.

6 Q. And then you said there came a time  
7 when he returned to Japan?

8 A. Yes.

9 Q. Do you know the circumstances  
10 surrounding his return to Japan?

11 A. At the expiration of his visa and the  
12 end of his ex-pat assignment and rotation.

13 Q. Do you know who assigned him to  
14 America?

15 A. I have no idea.

16 Q. When you mentioned that he became the  
17 number 2 under the CFO, was that also at MCHC?

18 A. Yes.

19 Q. And then he became CFO at MCHC?

20 A. Yes.

21 Q. And he retained that position until  
22 you left the company?

23 A. Yes.

24 Q. Mr. Kosakai, do you know his first  
25 name?

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2 A. Mr. Kosakai, no, I don't remember his  
3 first name.

4 Q. Can you tell me Mr. Kosakai's role?

5 A. My memory is that he was the CFO prior  
6 to Mr. Date.

7 Q. At MCHC?

8 A. At MCHC.

9 Q. Can you tell me who Noriyoshi Ohira  
10 is?

11 A. Yes. Ohira was responsible for human  
12 resources at MCHC.

13 Q. And Masanori Sakaguchi, I think we  
14 discussed him earlier, correct?

15 A. Yes.

16 Q. Was he the GC at Rayon?

17 A. Yes.

18 Q. Are you aware of any other positions  
19 he had?

20 A. That he, when Rayon was merged into  
21 MCC, became a member of the legal function, and  
22 when Ken was promoted, Mr. Sakaguchi became the  
23 head of the legal department at MCHJ.

24 Q. All right. So I just want to unpack  
25 that a little bit for clarity.

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2 So Mr. Sakaguchi was, at one point,  
3 the GC at Rayon, correct?

4 A. Yes.

5 Q. And then Rayon merged into MCC?

6 A. Yes.

7 Q. And then when Rayon merged into MCC,  
8 who was handling MCC's legal work with respect to  
9 Japanese legal needs?

10 A. Well, there were many people, but Ken  
11 Fujiwara was heading the department at that time.

12 Q. Okay. When you say "department at  
13 that time, are you referring to MCHJ?

14 A. There have been so many retitlings and  
15 shiftings, that it is impossible for me to answer  
16 with total accuracy at any given point in time  
17 whether someone worked at MCHJ or a different  
18 entity.

19 Q. Okay. Well, let's see if we can  
20 clarify with respect to Mr. Fujiwara, okay?

21 Did you tell me that, at one point, he  
22 was at MCHJ?

23 A. I believe so.

24 Q. And did you tell me that, at one  
25 point, he was at MCHC?

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2 A. Yes.

3 Q. Do you remember whether he shifted  
4 from one to the other?

5 A. I'm not sure what you mean by shifted.

6 Q. Did he switch entities that he worked  
7 for?

8 A. I have no idea who his employer was at  
9 any given time.

10 Q. Was there any given point in time  
11 where you associated him with concurrent  
12 representation of both MCHJ and MCHC?

13 MS. GUERON: Objection.

14 MR. FORTINSKY: Objection to form.

15 MS. COLWIN: Objection.

16 A. I don't think I ever thought about  
17 that. I -- I don't know.

18 MR. BERMAN: Okay. We'll come back to  
19 this later.

20 Plaintiff's 4, please.

21 (Plaintiff's Exhibit 4, two-page  
22 document Bates stamped DEF 001590,  
23 confidential, marked for Identification, as  
24 of this date.)

25 MR. BERMAN: Again, I will remind you,

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2 any time you want a break, just let me know.

3 THE WITNESS: I'm good.

4 MR. BERMAN: I'm going to give you  
5 another exhibit as Plaintiff's 5.

6 (Plaintiff's Exhibit 5, two-page  
7 document Bates stamped DEF 000821 and DEF  
8 000822, confidential, marked for  
9 Identification, as of this date.)

10 MR. BERMAN: So I'll identify for the  
11 record, Exhibit 4 it's a two-page document  
12 Bates stamped DEF 001590, and Exhibit 5 is a  
13 two-page document Bates stamped DEF 000821  
14 to 822.

15 Q. Ms. Costa, do you recall earlier when  
16 I showed you Exhibit 2, which was a position  
17 profile?

18 A. Yes.

19 Q. Okay. Now I'm showing you Exhibit 4,  
20 which is a position profile that purports to be  
21 for the assistant general counsel, corporate  
22 position.

23 Do you see that?

24 A. Yes.

25 Q. Do you see that Exhibit 5 purports to

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2 be a position profile for the general counsel and  
3 chief compliance officer position?

4 A. Yes.

5 Q. So with respect to Exhibits 2, 4 and  
6 5, did you have any role in creating these  
7 documents?

8 MS. GUERON: Objection. These  
9 documents have no date.

10 A. I had a role in creating documents  
11 similar, but I have no idea if these documents are  
12 the same as the ones I created.

13 Q. Okay. That's fair.

14 Did there come a point in time where  
15 you worked with MCHA's human resource's department  
16 to craft position profile documents?

17 A. Yes.

18 Q. And was there a particular point in  
19 time where that took place?

20 A. Shortly after I became president, we  
21 created position profiles for all positions in the  
22 company, not just the legal department.

23 Q. Was there anything in particular that  
24 prompted you to do that?

25 A. There were positions for which there



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2 was no profile, and I didn't think that was a good  
3 practice.

4 Q. When did you become aware that there  
5 were positions for which there was no profile?

6 A. I don't recall.

7 Q. Were you aware that there were  
8 positions with no profile during your tenure as  
9 general counsel?

10 A. I was aware only about legal  
11 department internal audit and human resource  
12 positions at that time.

13 Q. So with respect to those categories  
14 that you just enumerated, were you aware that  
15 there were positions with no profile?

16 A. Either no profile or -- or old  
17 profiles, you know, that I thought needed to be  
18 updated. I have no specific recollection with  
19 respect to each position.

20 Q. So did you institute some kind of  
21 process pursuant to which the profiles were  
22 updated?

23 A. Yes.

24 Q. What was that process?

25 A. I asked Pat Saunders, the head of HR,

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2 to do so.

3 Q. Did you give Pat any instructions as  
4 to which positions to start with?

5 A. I said all positions.

6 Q. So, did Pat consult with you on  
7 preparing profiles?

8 A. Yes.

9 Q. So, how did that work? Did she draft  
10 them first and present them to you?

11 A. I don't recall.

12 Q. Okay. So let's limit it to the legal  
13 positions. Does that make it easier?

14 MS. GUERON: Objection.

15 A. With the legal positions, I gave her  
16 whatever I had at the time, asked her to work with  
17 those, and then I reviewed.

18 Q. Do you know whether this was a project  
19 that took a substantial amount of Ms. Saunders'  
20 time?

21 MS. GUERON: Objection.

22 MS. COLWIN: Objection.

23 A. I have no idea.

24 Q. You supervised Ms. Saunders at that  
25 time, didn't you?

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2 A. Yes. And they got -- they were  
3 completed pretty quickly. I have no idea how much  
4 time she spent on them.

5 Q. Did she consult with you concerning  
6 the different subject matter areas of these  
7 documents?

8 A. Yes.

9 Q. So, she provided you with drafts that  
10 included these same subject matters?

11 A. I don't recall.

12 Q. Well, do you recall instructing Pat to  
13 change the format of the position profile?

14 A. Change the format?

15 Q. Yes.

16 A. I don't recall.

17 Q. Would you agree with me that Exhibits  
18 2, 4 and 5 are all in substantially the same  
19 format?

20 A. Oh, yes. I mean, one of the  
21 directions was that every position in the company  
22 should have a position profile in a consistent  
23 format, following a certain format, and should be  
24 either updated or created if it doesn't exist.

25 Q. Did you have any particular purpose in

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2 mind that these position profiles were to serve?

3 MS. GUERON: Objection.

4 A. Multiple purposes.

5 Q. Can you explain to me what the purpose  
6 is of having a position profile?

7 A. It -- one is it assists with searches  
8 and recruiting. It means we didn't have to create  
9 a new profile every time we hired. I thought that  
10 was inefficient.

11 Q. Okay.

12 A. 2, I thought it was important that  
13 every employee receive their own position profile  
14 and the corresponding competency bands, so that  
15 they understood what their responsibilities were,  
16 what the expectations were, to make it easier to  
17 hold people accountable.

18 Q. Okay. Any other material purposes  
19 that you envisioned to use the position profiles  
20 for?

21 A. None that come to mind.

22 Q. If any do, would you please let me  
23 know?

24 A. Yes.

25 Q. So, with respect to the attorney

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2 positions, right? We're looking here at corporate  
3 counsel, assistant general counsel, and general  
4 counsel, and chief compliance officer.

5 Do you recall reviewing position  
6 profiles for those positions with Ms. Saunders?

7 A. Not specifically, no.

8 Q. Do you know whether Ms. Saunders ever  
9 provided you with a position profile for the  
10 corporate counsel position?

11 A. I have no specific memory.

12 Q. During your tenure as -- let me frame  
13 this temporally, okay? I'm interested only right  
14 now in your tenure as general counsel and as  
15 president. Put those two together mentally for a  
16 moment, okay?

17 A. Okay.

18 Q. Does this position profile for the  
19 corporate counsel position accurately describe the  
20 nature of the corporate counsel position during  
21 that temporal period?

22 A. I don't know if this was the document  
23 we created, and my memory isn't specific enough to  
24 be able to tell you whether -- what differences  
25 there might be between what we created and this

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2 document. I gave her the job descriptions  
3 prepared for the corporate counsel searches I had  
4 done recently. That served as the basis.

5 Q. Sitting here today, looking at the key  
6 responsibilities and the experience and  
7 qualifications that are contained in this  
8 corporate counsel position profile, do those items  
9 listed here accurately reflect the nature of the  
10 position during your tenure in that temporal  
11 period we just described?

12 MS. GUERON: So we're talking about  
13 Exhibit 2?

14 MR. BERMAN: Yes.

15 MS. GUERON: So take your time.

16 A. So you're asking if, even before this  
17 document was created, this document accurately  
18 reflects what the position was?

19 Q. No, ma'am. Let me rephrase the  
20 question.

21 A. Okay.

22 Q. So you had a corporate counsel  
23 position while you were general counsel, correct?

24 A. Yes.

25 Q. And you also had a corporate counsel

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2 position while you were president, correct?

3 A. Yes.

4 Q. So that position existed potentially  
5 before this document was created, right?

6 A. The corporate counsel, while I was  
7 general counsel, potentially existed before this  
8 was created. Stephen Rose was the first corporate  
9 counsel hired after I became president. I do not  
10 recall that this document existed at that time.

11 Q. Okay. So, what I want to clarify is,  
12 I'm not asking you whether this document existed  
13 at the time. What I'm asking is, this document  
14 that exists now, does the content of it accurately  
15 describe the position as it existed back in that  
16 time?

17 Does that make sense?

18 A. It makes sense. But I -- I don't know  
19 that I can accurately answer that question. If  
20 you want, I will review the document.

21 Q. That would be helpful, thank you.

22 MR. BERMAN: Can we go off the record  
23 for a moment while the witness reviews the  
24 document.

25 MS. GUERON: No, we --

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2 THE WITNESS: This is going to take me  
3 less than a minute.

4 MR. BERMAN: Oh, okay.

5 MR. COLWIN: We're going to stay on  
6 the record while she reviews documents.

7 MR. BERMAN: Well, Counsel, I don't  
8 agree to that.

9 MS. GUERON: I don't -- I don't think  
10 that is debatable. That is how it --

11 MR. BERMAN: If you want to stay on  
12 the record, that's fine. I'm not being held  
13 accountable for the time that the witness  
14 could be taking off the record.

15 MS. GUERON: That's not right. Your  
16 seven hours encompasses her testimony and --  
17 I'm not done -- her review of any documents  
18 you want to show her. She is not reviewing  
19 documents off the record on her clock.

20 MR. BERMAN: I don't agree, Counsel.

21 MS. GUERON: I don't care. That is  
22 encompassed in the seven hours.

23 MR. BERMAN: Well, we'll take it to  
24 the judge, if we need to.

25 MR. VALLI: So are we off the record



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2 or not?

3 MS. GUERON: We are on the record.

4 THE WITNESS: I'm finished, so we're  
5 on the record one way or the other.

6 MS. GUERON: Take your time reading  
7 it, okay?

8 THE WITNESS: Yeah.

9 Q. Okay. So, now are you able to answer  
10 my question?

11 A. This, more or less, generally  
12 generically describes what this position might  
13 have been.

14 Q. Okay. Now let me make it more  
15 concrete, okay?

16 A. Okay.

17 Q. At some point during your tenure,  
18 Ms. Fischman occupied the position of corporate  
19 counsel, correct?

20 A. Yes.

21 Q. Are there any material differences  
22 between the key responsibilities, the experience  
23 and the qualifications reflected in this document  
24 and the key responsibilities, experience and  
25 qualifications needed for the corporate counsel

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2 position while Ms. Fischman was the incumbent?

3 A. I would say that Ms. Fischman did some  
4 or all of the responsibilities that are described  
5 in here.

6 Q. And under experience and  
7 qualifications, do you see where it says,  
8 "corporate counsel must be a competent and  
9 business savvy legal professional with a minimum  
10 of five years of legal experience in-house and/or  
11 in an international law firm, dealing with a broad  
12 range of issues."

13 Do you see that text?

14 A. Yes.

15 Q. And in your view, is five years'  
16 minimum experience necessary to perform this role?

17 MS. GUERON: Objection.

18 A. This was the aim. Again, this was --  
19 you know, this was the generic template. But I  
20 guess at the -- I don't know if I'm the one who  
21 wrote five years, by the way, so let's just  
22 clarify that. I don't know what it said when I  
23 worked on the document. But, sitting here today,  
24 I think that five years is useful.

25 Q. Okay. Sitting here today, do you have

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2 any reason to think that, at any point, the  
3 position profile for this position required less  
4 than five years of experience?

5 MS. GUERON: Objection.

6 A. I would have considered hiring someone  
7 with less than five years.

8 Q. How much less?

9 A. It would be case specific.

10 Q. Depending on what?

11 A. Depending on the person and depending  
12 on the role. As I said, this is the general  
13 generic explanation, but, in fact, Joe Sherinsky  
14 was hired to focus on IP. He had the corporate  
15 counsel title, but he did IP.

16 There are people with that title who  
17 were responsible for pharma. There were people  
18 with that title who were responsible more broadly.  
19 So, it would depend on where their focus was. We  
20 were not strictly compartmentalized. People  
21 didn't have just a narrow role, but we had needs  
22 we tried to meet.

23 Q. So, I think you mentioned -- who is it  
24 that you mentioned that was the corporate counsel  
25 that was doing the intellectual property?

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2 A. Joe Sherinsky, who reported to Kathryn  
3 Roche.

4 Q. And we saw him on the org chart here  
5 earlier, right?

6 A. Yes.

7 Q. So, when you recruited for that  
8 position, would you have tailored the position  
9 profile to reflect the need for intellectual  
10 property?

11 A. The position --

12 MS. GUERON: Objection.

13 A. -- didn't exist at the time.

14 Q. Did you have a version of it?

15 A. I don't recall --

16 Q. Okay.

17 A. -- that there was a version.

18 Q. Didn't you tell me that when you were  
19 recruiting, you would prepare a document?

20 A. Oh, not a version of this, but, yes,  
21 what I gave to the recruiter; the recruiter and I  
22 would generate the job description.

23 Q. So when you referred to the job  
24 description provided to the recruiter, it was  
25 materially different than this kind of document?

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2 MS. GUERON: Objection to form.

3 Identifying Exhibit 2.

4 MR. BERMAN: Yes. Exhibit 2.

5 A. That was the point I tried to make  
6 earlier. So, to clarify, up until the time this  
7 document was created, a job description was  
8 created for each role on a case-by-case basis.

9 Q. Okay.

10 A. When these documents were created,  
11 they were intended to serve as templates.

12 Q. So, when you actually recruited for an  
13 open position using a recruiter, did you provide a  
14 job description?

15 A. Yes.

16 Q. Was it tailored to that particular  
17 opening?

18 A. Yes.

19 Q. Did it include key responsibilities?

20 A. Yes.

21 Q. Did it include experience and  
22 qualifications?

23 A. Yes.

24 Q. Did you provide any other objective  
25 criteria to the recruiter other than key

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2 responsibilities, experience and qualifications?

3 MS. GUERON: Objection.

4 A. This -- this was the -- the bulk of  
5 what I provided.

6 Q. Now, let me draw your attention to  
7 Exhibit 4. All right?

8 Now, you can take a moment to review,  
9 but if you compare the key responsibilities of  
10 each of these positions in these documents,  
11 they're the same, right?

12 MS. COLWIN: Objection.

13 A. They're very close, yes.

14 Q. What's different?

15 A. The number of years, the proficiency  
16 level, the -- there are statements that are the  
17 same, but the expectations were different, as can  
18 be understood from the fact that one says five  
19 years and the other says 15 years.

20 Q. Okay. But you'll agree with me,  
21 right, that each of the bullet points under key  
22 responsibilities, under Exhibit 2 and Exhibit 4,  
23 they're identical, word for word, right?

24 A. They are not --

25 MS. COLWIN: Objection.

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2 A. -- identical.

3 MS. GUERON: Take your time.

4 A. So, if you're asking me simply to read  
5 both documents and tell you if they're identical,  
6 I can do that, but I cannot tell you what these  
7 documents said when I was in the role.

8 Q. Okay.

9 A. I cannot tell you why they're  
10 identical are not. I cannot answer any  
11 substantive question. But if you want me to  
12 compare them, I will.

13 Q. Let me ask you this: Did you  
14 participate in the production of documents  
15 responsive to plaintiff's discovery demands in  
16 this case?

17 MS. GUERON: Objection.

18 A. Yes.

19 Q. And did you participate on behalf of  
20 MCHA?

21 MS. COLWIN: Objection.

22 MS. GUERON: Objection.

23 A. I'm not an employee of MCHA, but I  
24 shared my experience as a former employee of MCHA.

25 Q. Do you know why we don't have any

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2 position profiles that predate these?

3 MS. GUERON: Let me just caution you,  
4 to the extent that your answer would reveal  
5 any privileged communications, please do not  
6 do so.

7 MS. COLWIN: I join.

8 A. I do not know.

9 Q. Do you know if any exist?

10 A. I do not know.

11 RQ MR. BERMAN: We call for production of  
12 any position profiles for the corporate  
13 counsel position, the assistant general  
14 counsel corporate position, and the general  
15 counsel and chief compliance officer  
16 position, because these are the only ones  
17 that have been produced.

18 MS. COLWIN: Taken under advisement.

19 MR. BERMAN: Okay.

20 Q. One other question about these  
21 documents. Each of them under key  
22 responsibilities in the second to last bullet  
23 point, says, "interacts with other functions at  
24 MCHC" --

25 MS. GUERON: So you're just comparing



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2 2 and 4?

3 MR. BERMAN: They all say the same  
4 language. I'm just -- I'm --

5 Q. With respect to Exhibit 2, Exhibit 4  
6 and Exhibit 5, the second to last bullet point  
7 under key responsibilities, for each of those says  
8 interacts with other functions at MCHC," correct?

9 MS. GUERON: Objection.

10 Q. With respect to any of these position  
11 profiles, can you tell me what that means?

12 A. I think MCHC was intended to be read  
13 as MCHC group. And this was meant to refer to the  
14 fact that, as a member of the legal department, we  
15 were all required to work with different functions  
16 across different affiliated entities, from time to  
17 time, in order to effectively serve our clients.

18 Q. Okay. Did you participate in the  
19 initial hiring of plaintiff, Jennifer Fischman?

20 A. Yes.

21 Q. As part of hiring Jennifer Fischman,  
22 did you request a copy of the applicant's resumé?

23 A. Yes.

24 Q. Were there any other applicants for  
25 the position?

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2 A. Yes.

3 Q. Did you request copies of their  
4 resums?

5 A. I got everything that was provided to  
6 me by Sandy Friedman and PeterSan Group.

7 Q. For each candidate that was presented  
8 to you by Sandy at PeterSan Group, did each one of  
9 them have a resumé?

10 A. I believe so.

11 Q. It would be pretty unusual if they  
12 didn't, right?

13 A. Yeah.

14 Q. Why did you want a copy of the resumé?

15 A. Because I was evaluating specifically  
16 what their experience was, not simply whether they  
17 met the check-the-box key response -- or  
18 check-the-box experience and qualifications that  
19 you usually find in a job description.

20 Q. Couldn't you get that information  
21 verbally from a candidate?

22 A. The point was for me to not meet with  
23 20 candidates or 40 candidates, but to narrow it  
24 down in advance using my best judgment to who was  
25 most likely to be qualified.

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2 Q. So, in your view, the resumé provided  
3 you with the information necessary to determine  
4 whether you would want to take the next step with  
5 an applicant?

6 MS. GUERON: Objection.

7 A. Correct.

8 Q. Were there any other materials that  
9 you requested be provided to you by Sandy at  
10 PeterSan concerning applicants?

11 A. I don't recall.

12 Q. Did you ask for writing samples?

13 A. I don't recall.

14 Q. Did you review Ms. Fischman's resumé?

15 A. Yes.

16 Q. I'm going to provide you with a  
17 document --

18 MR. BERMAN: Let's just mark this.

19 (Plaintiff's Exhibit 6, a three-page  
20 document Bates stamped DEF 000720 to 722,  
21 confidential, marked for Identification, as  
22 of this date.)

23 Q. Take a minute to look at it.

24 A. This was not the resumé I saw. The  
25 resumé --

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2 MS. GUERON: There's no question  
3 pending.

4 THE WITNESS: Sorry.

5 MR. BERMAN: It's okay.

6 I'm going to identify for the record  
7 that this document is a three-page exhibit  
8 Bates stamped DEF 000720 to 722.

9 Q. Ms. Costa, I'll represent to you that  
10 this document was produced to us by the defendants  
11 in this litigation, so we understand it to have  
12 come from Defendant MCHA's files.

13 Do you have any reason to believe that  
14 it didn't come from MCHA'S files?

15 A. No.

16 Q. So was there some other version of a  
17 resumé for Ms. Fischman that you've seen  
18 previously?

19 A. The resumé for Ms. Fischman that I  
20 reviewed was the one I saw in 2008 when I  
21 interviewed her for the role.

22 Q. So that would have included her time  
23 up through her employment at Raytheon Co., right?

24 A. That's correct.

25 Q. And that's reflected on this document

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2 on the lower position of the first page, correct?

3 A. Yes.

4 Q. So, substantively, was the information  
5 on this document, commencing from where it  
6 mentions Raytheon and onward, right; so, from the  
7 bottom half of the first page through the final  
8 page, substantively, is this what you would have  
9 considered when Ms. Fischman applied for her first  
10 position at MCHA?

11 MS. GUERON: Objection.

12 A. Yes. In -- in sub -- general  
13 substance, yes.

14 Q. In a general sense, is this the type  
15 of information that would have allowed you to  
16 determine whether she was qualified for the  
17 position?

18 A. Yes.

19 Q. And is there anything in particular in  
20 this document that allows you to make that  
21 determination?

22 A. I liked that she had both law firm  
23 experience and in-house counsel experience.

24 Q. What was it that you liked about her  
25 having law firm experience?

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2 A. I think there's a certain rigor of  
3 training that you get from law firm experience.  
4 But I also learned from previous hires that hiring  
5 fresh out of law firms sometimes did not  
6 sufficiently prepare people, that, in fact, the  
7 in-house experience was more valuable to  
8 Mitsubishi than the law firm experience.

9 Q. Okay. So you were able to determine  
10 from this that Ms. Fischman had both law firm  
11 experience and in-house counsel experience,  
12 correct?

13 A. Correct.

14 Q. Is there any other substantive  
15 information that would have helped you make that  
16 determination in this document?

17 MS. GUERON: Objection.

18 A. That was, um -- that, and the  
19 descriptions of what she did in each of her roles,  
20 of course.

21 Q. Are you familiar with the law firm of  
22 Fried, Frank, Harris, Shriver & Jacobson?

23 A. I've heard of them, yes.

24 Q. They're a nationally-known law firm,  
25 right?

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2 A. Yes.

3 Q. And same question with respect to  
4 Paul, Hastings, Janofsky & Walker, correct?

5 A. Yes.

6 Q. And the law firm that you worked for,  
7 Cleary, is also a well-known national law firm,  
8 correct?

9 A. Yes.

10 Q. Are you familiar with the term Am Law  
11 100?

12 A. Yes.

13 Q. Can you tell me what that term means  
14 to you?

15 A. American Lawyer is a magazine that  
16 publishes a list that ranks law firms based on  
17 various criteria, that I have not followed.

18 Q. Do you know how many firms are ranked  
19 in the Am Law 100?

20 A. Well, it says Am Law 100, so I would  
21 guess 100, but I actually have no knowledge.

22 Q. Is Cleary one of the firms in Am Law  
23 100?

24 MS. GUERON: Objection.

25 A. It was when I was there.

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2 Q. Do you know whether Paul, Hastings has  
3 ever been a firm in the Am Law 100?

4 MS. GUERON: Objection.

5 A. I have no idea. This is not something  
6 that I look at.

7 Q. Same with Fried, Frank, do you know?

8 MS. GUERON: Objection.

9 A. Yeah, I don't know. It wasn't one of  
10 my criteria.

11 Q. Okay.

12 A. Criterion.

13 Q. Now, there came a time when  
14 Ms. Fischman was in the acting general counsel  
15 role at MCHA, correct?

16 A. Yes.

17 Q. And there came a time when you  
18 determined that you wanted to hire someone new for  
19 the general counsel role, correct?

20 A. Yes.

21 Q. Did you see applicants for that  
22 position?

23 MS. GUERON: Objection.

24 A. I met with Lee Udelsman at Major,  
25 Lindsey & Africa, and discussed the fact that I



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2 was being promoted and that I would be asking them  
3 to do a search for general counsel, but we did not  
4 proceed with that search.

5 Q. Did you get to the point in the search  
6 where you provided criterion to Major, Hagen (sic)  
7 & Lindsey?

8 MS. GUERON: Objection.

9 A. Major, Lindsey & Africa, no.

10 Q. So how far did you get in that  
11 process?

12 A. A lunch discussion.

13 Q. Can you recall when that took place?

14 A. It would have been the fall of 2014.

15 Q. And, at some point, did you decide  
16 that you were interested in Nick Oliva for the  
17 position?

18 A. I first considered Nick for that  
19 position in the late August, early September time  
20 frame, 2015.

21 Q. So this is a year after you spoke with  
22 Major, Lindsey & Africa?

23 A. That's correct.

24 Q. Okay.

25 A. Not quite a year, but, yes.

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2 Q. Because I thought you told me you met  
3 with Lee in the fall of 2014; is that right?

4 A. Yes. Yes. A year later.

5 Q. And then you first considered  
6 Mr. Oliva in late August of 2015.

7 Did I get that right?

8 MS. GUERON: Objection.

9 A. Either late August, early September,  
10 yes.

11 Q. So, did you ultimately consider any  
12 other candidates for the position besides  
13 Mr. Oliva?

14 A. So, your question suggests that it  
15 unfolded in a way that it did not exactly unfold,  
16 but the answer is, there was no one whom I  
17 seriously considered for the role.

18 Q. You mean no one other than Mr. Oliva?

19 A. What time frame were you asking about?

20 Q. Well, I asked you whether you  
21 considered any other candidates and you said --

22 A. At any time.

23 Q. Yes. And you said that you couldn't  
24 answer that question because it unfolded in a  
25 different way. And then you responded that there

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2 was no one whom I seriously considered, but you  
3 ultimately hired Mr. Oliva, correct?

4 A. Yes. So at the time --

5 MS. GUERON: What is the question?

6 THE WITNESS: Yes. Yeah, I'm a little  
7 confused.

8 Q. So you said you first considered  
9 Mr. Oliva in late August of 2015 or early  
10 September of 2015, right?

11 A. Yes.

12 Q. And you were considering him for the  
13 role of general counsel, correct?

14 A. Yes.

15 Q. At that time, did you also contemplate  
16 that position being responsible for compliance?

17 A. Yes.

18 Q. So it's one position or two positions?

19 A. I was treating it as one position.  
20 That was what I thought it should be.

21 Q. And so, what I'm asking you is, with  
22 respect to that position, general counsel and  
23 chief compliance officer, you said you considered  
24 Mr. Oliva.

25 Did you consider anyone else?

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2 MS. GUERON: In 2015?

3 MR. BERMAN: Ever.

4 MS. GUERON: What do you mean, ever?

5 There's two different hiring time periods,  
6 so help her out here. What date are we  
7 talking about, 2015 or 2014?

8 MR. BERMAN: We're talking about the  
9 general counsel position, okay?

10 MS. GUERON: Right.

11 MR. BERMAN: So let's break it up into  
12 pieces, okay?

13 Q. In or around August of 2015 and  
14 September of 2015, right, at that time, around  
15 that time, fall of 2015, you considered Mr. Oliva  
16 for hiring into the general counsel, chief  
17 compliance officer position, correct?

18 A. Yes. But I want to go back to the  
19 earlier time period --

20 MS. GUERON: That is not a question  
21 pending. You answered his question. Wait  
22 for the next question.

23 Q. I'm going to give you a chance, okay?  
24 We're going to do it how you can get all your  
25 information out. As I explained, part of my job

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2 is to learn what you know.

3 A. Yes.

4 Q. So, focusing on this August to  
5 September 2015 period.

6 A. Yes.

7 Q. Did you consider any other candidates  
8 for the general counsel and chief compliance  
9 officer position?

10 A. No.

11 Q. Why not?

12 A. Because MCHA had a preference for  
13 having an internal promotion, and I had previously  
14 reviewed, in my mind, the assistant general  
15 counsels, of which there were three, and  
16 considered Jennifer to be the only qualified of  
17 those three. And when it came time for me to make  
18 plans to replace Jennifer, my first thought was to  
19 the only other person who was, um, a -- an  
20 internal hire, although there had been a break in  
21 time.

22 Q. So, just for clarify, when you say  
23 your first thought was an internal hire and there  
24 had been a break in time, you're referring to  
25 Mr. Oliva right?

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2 A. Yes. He had left. But people come  
3 and go sometimes at Mitsubishi.

4 Q. Sure. Okay.

5 Then, with respect to the internal  
6 candidates that you did not consider to be  
7 qualified, which individuals are you referring to?

8 A. Kathryn Roche and Andy Csaszar.

9 Q. Is there a particular reason that  
10 comes to mind why Ms. Roche would not be qualified  
11 for the position?

12 A. She was not willing to come back full  
13 time and to work in the office on a regular basis.

14 Q. Have you completed your response?

15 A. Yes.

16 Q. Okay. Same question with respect to  
17 Mr. Csaszar -- can you spell the last name for me,  
18 please?

19 A. C-S-A-C-Z-A-R.

20 REPORTER CORRECTION: C-S-A-S-Z-A-R.

21 Q. Was there a particular reason why, in  
22 your view, Mr. Csaszar was not qualified for the  
23 general counsel position?

24 A. I didn't think he had the depth of  
25 experience that was required.

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2 Q. All right. So then, at -- first of  
3 all, you had mentioned that MCHA preferred an  
4 internal promotion.

5 Did I get that right, or did you say  
6 MCHC?

7 A. I said MCHA.

8 Q. So, when you say that MCHA preferred  
9 an internal promotion, who is that?

10 A. Well, at the --

11 MR. FORTINSKY: Objection to form.

12 Q. That's you, right?

13 MS. GUERON: Objection.

14 A. At the time that Jennifer was hired,  
15 it was Mr. Yoshisato.

16 Q. So you're referring to the president  
17 at the time, right?

18 A. The president at the time the decision  
19 was made to appoint my successor.

20 Q. Okay. Now, Mr. Yoshisato transitioned  
21 out of MCHA, which created the vacancy for you to  
22 become president, correct?

23 A. Correct.

24 Q. Do you know where he transitioned to?

25 A. He moved to the internal audit

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2 department or group of an entity in Japan, that I  
3 think was MCHC, but I'm not certain.

4 Q. So, did you have any discussions with  
5 Mr. Yoshisato about why he preferred an internal  
6 candidate?

7 A. Yeah. There were two reasons. One,  
8 frankly, was budgetary. I told them what  
9 Mr. Udelsman told me it would cost to hire a  
10 general counsel, and they were concerned that,  
11 between my salary and the new general counsel's  
12 salary, that we would be significantly over  
13 budget.

14 And then the other reason was more  
15 cultural, that there was a preference for  
16 promoting from within and giving opportunities to  
17 internal candidates.

18 Q. So then, I think you mentioned that  
19 when you first considered Mr. Oliva in August of  
20 2015 and early September 2015, he was not hired at  
21 that time, correct?

22 A. Oh, no, that was the very first time  
23 I consider -- your question was considered.

24 Q. Yes. So you first considered hiring  
25 Mr. Oliva in August of 2015 or September of 2015,



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2 correct?

3 A. And began a process at that point.

4 Q. What is the process that you are  
5 mentioning; is that what you just described to me  
6 or something different?

7 A. The process -- I don't think I  
8 described it.

9 The process was that I learned from  
10 him, inadvertently, that he was available. I did  
11 not -- I'm not the person who -- I didn't -- I  
12 didn't ask him. I didn't offer him a job. I  
13 learned, inadvertently, that he considered himself  
14 available. I had a series of discussions with him  
15 about the role, and then he interviewed with  
16 people at MCHA.

17 Q. So, when was Mr. Oliva's first  
18 interview with MCHA?

19 A. Other than with me, I believe it was  
20 in October.

21 Q. When did he interview with you, or are  
22 those what you just described to me?

23 A. It started out as a discussion that  
24 was in a casual context, and I do not recall when  
25 we began talking formally.

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2 Q. Do you recall having a meeting with  
3 Mr. Oliva around your birthday?

4 A. He took me to lunch -- the answer is,  
5 after my birthday, yes.

6 Q. What month was that?

7 A. August.

8 Q. You're a Leo?

9 A. Yes.

10 Q. Me, too. Okay.

11 So you had a discussion with Mr. Oliva  
12 in August of 2015, correct?

13 A. Yes.

14 Q. And is that when you first considered  
15 him for employment?

16 A. That's when I first considered him,  
17 yes.

18 Q. From that time forward, from August  
19 2015, up until the time where Mr. Oliva was hired  
20 and commenced employment -- he commenced  
21 employment on November 30, correct?

22 A. Correct.

23 Q. So, between August 2015 and November  
24 30, 2015, were any other candidates considered for  
25 the position?

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2 A. No.

3 Q. You were present for the first day of  
4 depositions of plaintiff, Jennifer Fischman,  
5 correct?

6 A. Yes.

7 Q. Do you recall your counsel making a  
8 statement on the record that other candidates were  
9 considered for this opening?

10 MS. COLWIN: Objection.

11 MS. GUERON: Objection.

12 A. I -- I don't think she said that. I  
13 haven't read the transcript. I think what she  
14 said was that there were other qualified can --  
15 there were other candidates who could be  
16 considered, and I did consider Kathryn and Andy  
17 and Jennifer back in the fall of 2014. I didn't  
18 consider -- oh, and I -- Nick was theoretically a  
19 potential, but I didn't know he was available.

20 Q. Okay. So, remember, in response to  
21 one of my questions, you said that's not the way  
22 it unfolded, and I told you, you would have an  
23 opportunity to explain. Have you now fully  
24 explained to me, or is there a piece that's  
25 missing?

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2 A. I don't know.

3 MS. GUERON: Objection. I don't  
4 understand that question.

5 Q. I thought there was something you  
6 wanted to explain to me, so I want to make sure  
7 I've given you the opportunity.

8 MS. GUERON: Objection.

9 A. I think I'm comfortable with my  
10 answers.

11 Q. If that changes, please let me know.

12 A. Yes.

13 Q. I just want to clarify one of your  
14 recent responses.

15 You said you considered Kathryn --

16 A. Roche.

17 Q. -- Roche for the position, right? And  
18 you didn't view her as qualified, correct?

19 A. She wasn't prepared to come full time.

20 Q. And coming full time was a  
21 requirement, right?

22 A. Yes.

23 Q. And then, with respect to Mr. Csaszar,  
24 you didn't consider him qualified because of his  
25 depth of experience, I think you said?

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2 A. Not --

3 MS. GUERON: Objection.

4 A. Not as qualified as Jennifer.

5 MS. GUERON: Objection.

6 Q. Was he qualified for the general  
7 counsel position, if Jennifer wasn't in contention  
8 for it?

9 MS. GUERON: Objection.

10 A. In my opinion, no.

11 Q. Was it because of the depth of  
12 experience issue?

13 A. Yes.

14 Q. Were there any other candidates who  
15 were substantively qualified for the position that  
16 were considered, other than Mr. Oliva?

17 A. There were no other internal  
18 candidates, no.

19 Q. Were there any other external  
20 candidates?

21 A. I did not consider any.

22 Q. Okay. So, in your view, was Mr. Oliva  
23 an internal candidate?

24 A. Yes.

25 Q. All right. I'm just going to show you

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2 some things real quick here. These are all  
3 performance review for Ms. Fischman, so I'm sure  
4 you won't be surprised by any of these.

5 MR. BERMAN: Are we at 7?

6 (Plaintiff's Exhibit 7, multipage  
7 document Bates stamped DEF 000619 through  
8 631, confidential, marked for  
9 Identification, as of this date.)

10 MR. BERMAN: For identification,  
11 Exhibit 7 is a multipage document Bates  
12 stamped DEF 000619 through 631.

13 Q. Have you seen this document before?

14 A. Yes, I have.

15 Q. Can you tell me what it is?

16 A. This is the performance evaluation of  
17 Jennifer Fischman for year 2011, which was  
18 provided to her on March 8, 2012.

19 MS. GUERON: Take your time to look  
20 through it, please.

21 Q. Was MCHA on a fiscal year or a  
22 calendar year?

23 A. At this point in time, we were on a  
24 calendar year.

25 Q. At some point, that changed?

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2 A. Yes.

3 Q. Do you recall approximately when?

4 A. No.

5 Q. Okay. If anything jogs your memory,  
6 please let me know at that time.

7 I'll refer you to the last page of the  
8 document.

9 Is that your signature?

10 A. You gave me multiple documents, yes?

11 Q. No. I think it should all be the  
12 same.

13 I'll refer you to page 631. It's the  
14 final page of the packet. It should be. And by  
15 page numbers, I'm referring to the number stamped  
16 in the bottom right?

17 A. Okay. So, I want to note this is more  
18 than one performance evaluation, so my description  
19 of the document was not accurate. This is more  
20 than one --

21 Q. Okay.

22 A. -- evaluation.

23 Q. So, just to clarify then, from page  
24 619 to 623, that's one document, correct?

25 A. Correct.

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2 Q. Okay. Can you tell me what that is?

3 A. 619 to 623 is what I described  
4 previously.

5 Q. Okay. And is that your signature on  
6 page 623?

7 A. Yes.

8 Q. With the date 3/8/12?

9 A. Yes.

10 Q. And as far as you're concerned, does  
11 this accurately correspond to the performance  
12 appraisal delivered to Ms. Fischman for this time  
13 period?

14 A. Yes.

15 Q. And then with respect to pages marked  
16 624 to 631?

17 A. It's actually -- again, you've still  
18 lumped together two documents.

19 Q. So, can you tell me where one ends and  
20 one begins?

21 A. 624 through 627 is the performance  
22 evaluation provided to her on February 14, 2011.  
23 628 to 631 is the performance evaluation provided  
24 to Jennifer February 16, 2010.

25 Q. Okay. On page 627, is that your



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2 signature?

3 A. Yes, it is.

4 Q. On page 631, is that your signature?

5 A. Yes, it is.

6 Q. To the best of your knowledge, do  
7 these documents accurately reflect the performance  
8 reviews delivered to Ms. Fischman?

9 A. Yes, they do.

10 Q. Is it fair to say that she got  
11 positive reviews in each of these documents?

12 MS. GUERON: Objection.

13 A. She -- I gave her positive reviews,  
14 yes.

15 MR. BERMAN: The next one is going to  
16 be 8.

17 (Plaintiff's Exhibit 8, multipage  
18 document Bates stamped DEF 1479 through  
19 1483, confidential, marked for  
20 Identification, as of this date.)

21 MR. BERMAN: For identification,  
22 Plaintiff's 8 is a multipage document Bates  
23 stamped DEF 1479 through 83.

24 Q. Ms. Costa, can you tell me what this  
25 document is?

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2 A. This is the performance review for  
3 year 2012 that I gave to Ms. Fischman on February  
4 15, 2013.

5 Q. Did you sign the last page of this  
6 document?

7 A. Yes.

8 Q. Page 1483?

9 A. I did.

10 Q. To the best of your knowledge, does  
11 this accurately reflect the performance review  
12 delivered to Ms. Fischman during the time period  
13 reflected in the report?

14 A. Yes, it does.

15 MR. BERMAN: Next one is 9.

16 (Plaintiff's Exhibit 9, multipage  
17 document Bates stamped DEF 001383 to 1389,  
18 confidential, marked for Identification, as  
19 of this date.)

20 MR. BERMAN: For identification,  
21 Plaintiff's 9 is a multipage document Bates  
22 stamped DEF 001383 to 1389.

23 Q. Ms. Costa, have you seen this document  
24 before?

25 A. I believe so.

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2 Q. Can you tell me what it is?

3 A. This is not the performance evaluation  
4 I gave Ms. Fischman, but this is a review on the  
5 form for performance reviews.

6 Q. So is this a draft?

7 A. So -- give me a moment.

8 Q. Sure.

9 A. I believe this is the job that was  
10 created by Ms. Fischman.

11 Q. Did you ultimately review the draft?

12 A. I reviewed the draft, and it resulted  
13 in a final evaluation.

14 Q. Do you know whether that final  
15 evaluation resulted in an overall level of  
16 performance of exceeds expectations?

17 MS. GUERON: Objection.

18 A. I would need to look at it to tell you  
19 that.

20 Q. Do you have any reason to believe that  
21 in the year 2013, Ms. Fischman did not exceed  
22 expectations?

23 A. I would need to refer to her review  
24 from that year. But she was promoted.

25 Q. And you would have considered her

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2 reviews in the process of determining whether she  
3 should be promoted, correct?

4 A. The information that went into these  
5 reviews was considered in my decision to promote  
6 her.

7 Q. That works for me.

8 MR. BERMAN: Number 10.

9 (Plaintiff's Exhibit 10, multipage  
10 document Bates stamped DEF 000064 through  
11 000076, and also pages marked DEF 001004  
12 through 001012, confidential, marked for  
13 Identification, as of this date.)

14 MR. BERMAN: Plaintiff's 10 is a  
15 multipage exhibit bearing Bates stamps --  
16 actually, it's got a break -- so, it's  
17 bearing Bates stamps DEF 000064 through 76.  
18 And then there's also pages marked DEF  
19 001004 through 001012.

20 Let me know when you're ready

21 Ms. Costa.

22 THE WITNESS: Yes.

23 Q. So, I believe I've handed you two  
24 separate documents which are appended to each  
25 other.

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2 A. Yes.

3 Q. The first document marked DEF 000064  
4 through 76, let's start with that one first, okay?

5 Do you recognize this document?

6 A. Wait. Let me check the pages. You  
7 said through 76? Yes, I recognize this document.

8 Q. Can you tell me what it is?

9 A. This was the performance evaluation  
10 covering the year 2014 that I delivered to  
11 Jennifer April 29, 2015.

12 Q. Does this accurately reflect the  
13 performance evaluation delivered to Ms. Fischman?

14 A. Yes, it does.

15 Q. Can I direct your attention to page  
16 68?

17 A. Yes.

18 Q. That's your signature, right?

19 A. Yes.

20 Q. And then if you look up on the same  
21 page, you see under specific goal or objective?

22 A. Yes.

23 Q. Do you see where it says "see  
24 attached"?

25 A. Yes.

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2 Q. So if you flip forward now to page 70  
3 and onward, can you tell me what pages 70 through  
4 76 are?

5 A. Yeah. This is the list of goals and  
6 the action plan that Jennifer created for the  
7 coming year.

8 Q. So, this review date is dated April  
9 29, 2015 on the front cover.

10 Do you see that?

11 A. Yes.

12 Q. So, this document reflects  
13 Ms. Fischman's performance for the calendar year  
14 2014, correct?

15 A. Correct.

16 Q. Now, we hadn't switched from calendar  
17 year to fiscal year at this stage, had we?

18 A. It doesn't appear so.

19 Q. So then, at the time that this review  
20 was delivered, had there been a discussion with  
21 Ms. Fischman about what her role would be after  
22 April 15?

23 A. So, let me -- I said it doesn't appear  
24 so. I can't tell. I do not know if we switched  
25 fiscal year at that point.

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2 Q. Okay.

3 A. So, please ask your question again.

4 Q. Sure. So, the pages here that are  
5 marked pages 70 through 76 --

6 A. Yes.

7 Q. -- would you agree that that's forward  
8 looking in nature?

9 A. Yes. That's what goals and action  
10 plans always are.

11 Q. Did you have any discussions with  
12 Ms. Fischman that led to the preparation of these  
13 goals?

14 A. Yes.

15 Q. When did those discussions take place?

16 A. They started in January 2015, which is  
17 when I started working with her to prepare her for  
18 the role. I have no memory as to when this  
19 document might have first been created.

20 Q. When you say prepared for the role,  
21 are you referring to the acting general counsel  
22 and chief compliance officer position?

23 A. Yes.

24 Q. And that's one position, correct?

25 A. Yes.

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2 Q. Then with respect to the pages marked  
3 DEF 1004 through 1012, have you seen this before?

4 A. Yes.

5 Q. Can you tell me what this is?

6 A. There was Jennifer's draft of her  
7 midyear review.

8 Q. Now, you mentioned that you had some  
9 conversations with Jennifer that commenced in  
10 January of 2015 in connection with preparing her  
11 for the new role, correct?

12 A. Yes.

13 Q. Did you take any notes of those  
14 meetings?

15 A. No.

16 Q. Do you know if Jennifer took any notes  
17 of those meetings?

18 A. She took notes.

19 Q. How do you know she took notes?

20 A. Because she sat in my office and I  
21 watched her take notes.

22 Q. Okay.

23 A. She did not always. There were times  
24 when I said, you don't need to write this down, no  
25 need for notes, let's just talk; but there were



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2 many times when she came into my office and I  
3 watched her take notes.

4 Q. Okay. She had a little notebook of  
5 some kind?

6 A. I think it was a legal pad. But I  
7 don't recall.

8 Q. Have you been provided copies of the  
9 notes produced by Ms. Fischman?

10 A. The ones produced a couple of weeks  
11 ago? No.

12 Q. What about recently?

13 A. No.

14 Q. Okay. So I'm going to show you --

15 MR. BERMAN: Are we on 11?

16 THE REPORTER: We are on 11, yes.

17 (Plaintiff's Exhibit 11,

18 Ms. Fischman's notes, 43 pages, marked for  
19 Identification, as of this date.)

20 Q. I'm going to be super brief with this,  
21 because I'm just going to ask if you've seen it  
22 before.

23 So, Ms. Costa, have you ever seen  
24 Exhibit 11 before?

25 A. When I was sitting in the second day

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2 of Jennifer's deposition, I saw it in this form.

3 I kind of quickly looked at the first two or three  
4 pages. I did not have the time, because I was  
5 listening to Jennifer's testimony, to review it,  
6 but I did see it briefly.

7 Q. I'm going to represent to you that we  
8 produced this document after that date.

9 A. The second -- the second deposition?

10 Q. Oh, was that the second date of  
11 deposition?

12 A. That's what I intended to say.

13 Q. Okay. Fair enough. Okay.

14 Does that refresh your recollection as  
15 to whether Ms. Fischman had a spiral notebook that  
16 she took notes in?

17 MS. GUERON: Objection.

18 A. No, it doesn't.

19 Q. Okay. Let's move on.

20 The last review I showed you, was that  
21 Exhibit 10, the performance review?

22 A. Yes.

23 Q. And then the back of that was a draft  
24 for 2015 that Ms. Fischman provided to you, right?

25 A. Yes.

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2 Q. Now, later in 2015, did there come a  
3 time where you gave Ms. Fischman a review in  
4 November?

5 A. Yes.

6 Q. Did you make substantive edits to the  
7 draft that Ms. Fischman provided to you?

8 A. I don't think it bears much  
9 resemblance to the draft she provided to me.

10 MR. BERMAN: I'm going to show you --  
11 I guess this will be Exhibit 12.

12 (Plaintiff's Exhibit 12, multipage  
13 document Bates stamped DEF-747 through 752,  
14 confidential, marked for Identification, as  
15 of this date.)

16 MR. BERMAN: Exhibit Plaintiff's 12 is  
17 a multipage document Bates stamped DEF-747  
18 through 752.

19 Q. Ms. Costa, have you seen this document  
20 before?

21 A. Yes.

22 Q. Can you tell me what it is?

23 A. This -- this isn't signed, so I can't  
24 be certain, but it appears to be a copy, an  
25 unsigned copy of the evaluation I gave to Jennifer

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2 November 11, 2015.

3 Q. I'll direct your attention to page  
4 marked DEF-749.

5 A. Yes.

6 Q. And you'll see there is a narrative  
7 there under "manager comments."

8 Do you see that?

9 A. Yes.

10 Q. It continues on to the next page,  
11 correct?

12 A. Yes.

13 Q. Did you write these manager comments?

14 A. Assuming this is the same version,  
15 this is my final version, yes, I did.

16 Q. Do you know when the manager portion  
17 of the November 11, 2015 review was first drafted?

18 A. It would have been drafted by me  
19 shortly before I delivered that.

20 Q. So then, any comments made would have  
21 reflected Ms. Fischman's performance up to shortly  
22 before November of 2015, correct?

23 A. Shortly before, yes.

24 Q. Looking at these manager comments, do  
25 these accurately describe your performance

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2 appraisal of Ms. Fischman from that time?

3 A. Yes.

4 Q. Will you agree with me that you  
5 identify a number of what we can call performance  
6 deficiencies?

7 A. I gave five examples of performance  
8 deficiencies, as well as some general comments  
9 that reflected other deficiencies, yes.

10 Q. Did there come a time in 2015 where  
11 you desired to terminate Ms. Fischman?

12 A. Yes.

13 Q. When did you first have the desire to  
14 terminate Ms. Fischman?

15 A. Early August was the first time I  
16 communicated it to others.

17 Q. At that time in August of 2015, you  
18 were in the role of president of MCHA, correct?

19 A. Correct.

20 Q. Did you have the discretion to fire  
21 Ms. Fischman at that time?

22 A. I had the discretion to fire  
23 Ms. Fischman, yes.

24 Q. Why didn't you?

25 A. Because I was persuaded that it was in

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2 the best interest of MCHA to keep her on as  
3 assistant general counsel, if she were willing to  
4 return to the role.

5 Q. Who persuaded you that?

6 A. A combination of people, including Pat  
7 Saunders. I believe I discussed it with Dennis  
8 Trice. I discussed it with Ken Fujiwara.

9 Q. What position did Dennis Trice hold at  
10 the time?

11 A. He was the president of MCA.

12 Q. What's MCA?

13 A. MCA is that entity that was the  
14 regional headquarters of MCC in the Americas that  
15 was created not long before that.

16 Q. Was that an operating business?

17 A. No.

18 Q. So what was its role?

19 A. Its role was to provide other types of  
20 support and services to MCC affiliates only. Not  
21 MCHC affiliates, but MCC affiliates.

22 Q. Were those services overlapping with  
23 the services performed by MCHA?

24 MS. GUERON: Objection.

25 A. We made efforts -- Dennis and I made

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2 efforts to ensure they didn't overlap.

3 Q. Okay. Did you say it was MCA?

4 A. MCA.

5 Q. Did MCA provide legal services?

6 A. No.

7 Q. Did MCA provide internal audit  
8 services?

9 A. No.

10 Q. Did MCA provide tax services?

11 A. No.

12 Q. Did MCA provide finance and  
13 accounting?

14 A. No.

15 Q. Did MCA provide IT?

16 A. Some IT.

17 Q. So other than IT, were there any other  
18 areas of potential overlap?

19 A. HR.

20 Q. Okay.

21 A. Which is off -- out of MCHA by 2020.

22 Q. Would you agree with me that the  
23 decision to terminate an employee is a  
24 confidential matter for a company?

25 MS. COLWIN: Objection.

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2 MS. GUERON: Objection.

3 A. I don't understand the question.

4 Q. Why were you discussing the potential  
5 termination of an employee with someone outside of  
6 your company?

7 A. Dennis Trice and I were colleagues who  
8 worked extremely closely together because there  
9 was a lot of overlap. Dennis attended leadership  
10 meetings, and I used him as an advisor in dealing  
11 with Jennifer.

12 Q. Okay. So with respect to the Comtrex  
13 litigation, when did the Comtrex litigation take  
14 place?

15 A. I do not know when it began. Comtrex  
16 is a company that was acquired around 2013. This  
17 litigation arose subsequent to the acquisition,  
18 and the specific instance I refer to was in the  
19 summer of 2015.

20 Q. Can you be more specific of when in  
21 the summer?

22 A. I do believe there are documents that  
23 were produced in the case that evidence this, but  
24 I do not recall off the top of my head.

25 Q. And then the second item you have here



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2 concerns the Filtech matter, correct?

3 A. Yes.

4 Q. Did that involve an investigation of a  
5 Foreign Corrupt Practices Act matter?

6 A. Yes. In Mexico.

7 Q. When did that investigation take  
8 place?

9 A. Sometime after Stephen Rose was hired  
10 and before I wrote this evaluation.

11 Q. When was Stephen Rose hired?

12 A. Sometime after Jennifer took the  
13 position. So it was late spring, early summer,  
14 maybe early fall. All of these things are within  
15 a pretty small window.

16 Q. The Comtrex matter, did that involve  
17 Mike Gragtmans?

18 A. Yes, it did. Gragtmans.

19 Q. Is it G-R-A-G-T?

20 A. M-A-N-S.

21 Q. Was Mr. Gragtmans associated with a  
22 company called MCPP?

23 A. Yes.

24 Q. So, was Mr. Gragtmans a client of  
25 MCHA?

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2 A. Yes.

3 Q. And, by extension, he was a client of  
4 Ms. Fischman, correct?

5 A. Yes. I should say, he was not the  
6 client. The company that he was heading was the  
7 client.

8 Q. So what was his position at the  
9 company?

10 MS. GUERON: Objection.

11 A. I believe he was the president of MCPP  
12 at this time.

13 Q. Did you come to an understanding  
14 concerning a manner of interaction between  
15 Ms. Fischman and Mr. Gragtmans?

16 MR. BERMAN: Withdrawn.

17 Q. Were you familiar with Ms. Fischman's  
18 interactions with Mr. Gragtmans?

19 MS. GUERON: Objection.

20 MS. COLWIN: Objection.

21 A. I was aware of interactions between  
22 them over the course of a number of years, yes.

23 Q. Was there anything unusual, in your  
24 view, about the nature of those interactions?

25 MS. COLWIN: Objection.

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2 A. You would have to be more specific.

3 Q. Well, you supervised Ms. Fischman's  
4 work, correct?

5 A. Yes.

6 Q. So you became aware of her  
7 interactions with numerous clients, right?

8 A. Yes.

9 Q. So, was there anything about this  
10 interaction that was different in tone or content  
11 or nature than her other interactions with other  
12 clients?

13 MS. COLWIN: Objection.

14 MS. GUERON: Objection.

15 A. During the Contracts acquisition and  
16 during the A. Schulman acquisition, I believe it  
17 was an asset acquisition, Jennifer was often heard  
18 to be screaming at Mike Gragtmans. That was  
19 unusual.

20 Q. Are you aware that Mr. Gragtmans made  
21 favorable comments about Jennifer's performance in  
22 representing MCPP?

23 MS. COLWIN: Objection.

24 MS. GUERON: Objection.

25 A. Yes. Mike Gragtmans came around to

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2 respecting her and appreciating the services she  
3 provided, yes.

4 Q. Okay. Thank you.

5 And MCHA similarly received favorable  
6 feedback from other clients concerning  
7 Ms. Fischman's performance, correct?

8 MS. COLWIN: Objection.

9 MS. GUERON: Objection.

10 A. At various points in time, I received  
11 positive feedback from clients of MCHA about  
12 Jennifer's performance, yes.

13 Q. One of them was Noltex, right?

14 A. I have no specific memory with respect  
15 to Noltex. I think her contact was Philip Wiles,  
16 but I do not recall specific feedback.

17 Q. Do you know a Mr. Slaton that was  
18 affiliated with Noltex?

19 A. Yes.

20 Q. Do you know whether he provided  
21 positive --

22 A. I don't.

23 Q. -- performance feedback for  
24 Ms. Fischman?

25 MS. GUERON: Wait until he finishes

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2 the question.

3 THE WITNESS: Yes. I'm sorry. He  
4 said Slaton, and it just reminded me of  
5 someone I haven't thought of in a long time.

6 A. So, no, I have no memory of receiving  
7 positive feedback from Slaton Fry, I think was.

8 Q. Yeah. Thank you.

9 So, with respect to Ms. Fischman's  
10 representations of client matters, right, as an  
11 attorney, she owed her clients a duty, correct?

12 MS. GUERON: Objection.

13 A. Yes.

14 Q. Did she owe, as an attorney, anyone  
15 else besides the client a duty?

16 MS. COLWIN: Objection.

17 MS. GUERON: Objection.

18 A. She had many clients, so she owed many  
19 duties to many different clients.

20 Q. Can we agree that her duties as an  
21 attorney ran exclusively to her clients?

22 MS. COLWIN: Objection.

23 A. And to --

24 MS. GUERON: Objection.

25 A. -- her employer.

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2 Q. With respect to the Filtech matter, do  
3 you know whether Ms. Fischman retained outside  
4 counsel?

5 A. I do not recall.

6 Q. Do you know whether Arnold & Porter  
7 was involved in that matter?

8 A. I do not recall.

9 Q. Do you know whether Arnold & Porter  
10 issued a report in connection with that matter?

11 A. I do not recall.

12 Q. Do you know whether Arnold & Porter  
13 issued any recommendations with respect to Filtech  
14 FCPA practices?

15 A. I do not recall.

16 Q. Would you agree that the description  
17 of the Filtech matter in this performance review  
18 constitutes a reflection of Ms. Fischman's  
19 purported performance?

20 A. Yes.

21 RQ MR. BERMAN: We call for production of  
22 any Arnold & Porter recommendations  
23 concerning the Filtech matter.

24 MS. COLWIN: Taken under advisement.

25 MS. GUERON: Matt, we're coming up on

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2 two hours straight. No rush, but when you  
3 have a moment.

4 MR. BERMAN: Whenever you want to take  
5 a break, let me know.

6 MS. GUERON: I don't want to interrupt  
7 your line of questioning, so.

8 MR. BERMAN: We're good. Any time you  
9 want to take a break, just tell me.

10 THE WITNESS: I can't take my  
11 medication until 4:30, so I'm happy to go to  
12 4:30.

13 MS. GUERON: Fine.

14 MR. BERMAN: Just to be clear, any  
15 time anyone wants a break, that's fine.

16 MS. GUERON: Understood.

17 THE WITNESS: That's fine.

18 Q. Can I point you to the third comment.  
19 It's the paragraph beginning "third, you exhibited  
20 poor judgment with respect to the 4010 filing."

21 Do you see that?

22 A. Yes.

23 Q. Is that a reference to a pension  
24 matter?

25 A. It's -- this refers to an ERISA issue,

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2 yes, a pension matter.

3 Q. So --

4 A. 4010 refers to ERISA. It's a pension  
5 matter.

6 Q. Were you involved in creation of the  
7 pension referenced in this third paragraph?

8 A. There were three pensions involved in  
9 this issue. I was not involved in creating any of  
10 the three.

11 Q. Did you ever consult with Pat Saunders  
12 with respect to any of these pensions?

13 A. Yes.

14 Q. When did you first start working on  
15 these pension matters?

16 A. This is referring to one specific  
17 issue.

18 Are you asking me a broader question?

19 Q. Let me broaden the question.

20 Were you responsible for pension  
21 matters at MCHA?

22 MS. GUERON: Objection.

23 A. I was on the pension committee of one  
24 of the three companies.

25 Q. Was that during your tenure as GC --



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2 A. Yes.

3 Q. -- general counsel?

4 Did you retain that responsibility  
5 when you were promoted to president?

6 A. No.

7 Q. Was Pat Saunders involved with the  
8 pension program during your tenure as GC?

9 MS. GUERON: Objection.

10 A. I don't recall what her involvement  
11 might have been with these pensions.

12 Q. Was outside counsel retained in  
13 connection with the 4010 matter?

14 A. Yes.

15 Q. Was that Winston & Strawn?

16 A. I don't recall.

17 Q. Are you familiar with the work that  
18 Winston & Strawn performed in connection with that  
19 matter?

20 A. I am familiar with where we ended up.  
21 I am not familiar with the work that they did.

22 Q. Where did you end up, without  
23 revealing any privileged communications?

24 MS. GUERON: Can you? Can you answer  
25 that question without revealing privileged

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2 information?

3 Do you want to hear the question  
4 again?

5 A. I think I need to consult on that.

6 Q. Is it fair to say that the conclusion  
7 of that matter did not require the pension to pay  
8 any monies to the IRS?

9 MS. COLWIN: Objection. Don't answer.

10 MS. GUERON: I'll direct you not to  
11 answer, in deference to co-counsel.

12 MR. BERMAN: On what basis are you  
13 directing --

14 MS. COLWIN: Attorney-client  
15 privilege.

16 MR. BERMAN: Whether the IRS was paid  
17 money is attorney-client privilege?

18 MS. COLWIN: There is a lot of  
19 communication that went --

20 MR. BERMAN: I'm not asking about the  
21 communications, Counselor.

22 MS. COLWIN: You're asking for -- what  
23 are you asking for exactly?

24 MR. BERMAN: I'm asking whether the  
25 conclusion of that matter resulted in a

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2 payment to the IRS.

3 MS. GUERON: I think we have to table  
4 it.

5 MR. BERMAN: When you say table it,  
6 Counselor, what do you mean by that?

7 MS. COLWIN: I need to consult with  
8 the client to make sure that that can be  
9 divulged.

10 MR. BERMAN: Okay. Will you get me an  
11 answer to that --

12 MS. COLWIN: Yes.

13 MR. BERMAN: -- before we conclude  
14 today?

15 MS. COLWIN: Yes.

16 MR. BERMAN: Okay. Thank you.

17 Q. Did somebody at MCHA develop the  
18 pension plans?

19 MS. GUERON: Objection.

20 A. No. The pension plans preceded the  
21 creation of MCHA.

22 Q. All right. Turning your attention to  
23 the fourth point in this narrative concerning the  
24 interaction between Ms. Fischman and Kelli,  
25 K-E-L-L-I.

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2 Does that refer to Kelli Troccoli?

3 A. Yes.

4 Q. Is it fair to say that there was a  
5 considerable amount of friction between  
6 Ms. Fischman and Ms. Troccoli during their mutual  
7 employment at MCHA?

8 MS. GUERON: Objection.

9 A. At times, yes.

10 Q. Are you aware of what led to that  
11 friction?

12 A. I don't quite understand the question.

13 Q. So, during your tenure as general  
14 counsel, you supervised Ms. Fischman, correct?

15 A. Yes.

16 Q. You also supervised Ms. Troccoli,  
17 correct?

18 A. Yes.

19 Q. It came to your attention that, as you  
20 put it, at times they were not getting along,  
21 correct?

22 A. Yes.

23 Q. Did you take any steps to remediate  
24 that friction between these two individuals?

25 A. I spoke to each of them from time to

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2 time, and I requested that Pat Saunders speak to  
3 each of them.

4 Q. Did you form any conclusions about the  
5 source of the friction between them?

6 A. I never identified one source, no.

7 Q. Do you know why they didn't get along?

8 MS. GUERON: Objection.

9 A. Sometimes people don't get along.

10 Q. Do you know whether Ms. Fischman  
11 viewed Ms. Troccoli as attempting to undermine  
12 her?

13 A. There came a time when Jennifer told  
14 me that she believed that Kelli was trying to  
15 undermine her.

16 Q. Once you were informed of  
17 Ms. Fischman's view, did you take any steps to  
18 investigate the situation?

19 A. I referred it to Pat Saunders.

20 Q. When you say referred it to Pat  
21 Saunders, did you direct Pat Saunders to take any  
22 actions?

23 A. I don't recall exactly what the  
24 discussions were. Yeah, I don't recall.

25 Q. Did you review any of the

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2 communications between Ms. Fischman and  
3 Ms. Troccoli?

4 A. In what time period, with what -- on  
5 what topic?

6 Q. On the topic of their interpersonal  
7 relationships, did you review any of their  
8 communications in order to try to understand what  
9 the difficulty was that they were having with each  
10 other?

11 MS. GUERON: Again, time period?

12 Q. You just said you became aware that  
13 they were not getting along at times, correct?

14 A. Yes.

15 Q. Okay.

16 A. When I was president, I reviewed  
17 documents that -- I reviewed communications  
18 between Ms. Troccoli and Ms. Fischman and related  
19 documents.

20 Q. Did you form any conclusions about the  
21 bases for their not getting along?

22 A. I concluded that each had a very short  
23 fuse with the other, and that there were a number  
24 of factors that contributed to Ms. Fischman being  
25 unhappy with Kelli, and vice versa.

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2 Q. Did there come a time when  
3 Ms. Troccoli informed you that Ms. Fischman had  
4 altered one of her presentations?

5 A. I don't specifically remember that.

6 Q. During your tenure as general counsel,  
7 did you alter the work product of the personnel  
8 that you supervised?

9 A. Yes.

10 MS. GUERON: Objection.

11 Q. And that was within your purview as  
12 general counsel, correct?

13 A. Yes.

14 Q. So, to the extent that Ms. Fischman,  
15 in fact, did modify any of Ms. Troccoli's  
16 presentations, it would have been within the scope  
17 of her duties to do so, correct?

18 MS. GUERON: Objection.

19 A. I'm not in a position to say.

20 Q. All right. Turning your attention to  
21 the next paragraph, referencing Project Genesis.

22 Is Project Genesis an acquisition that  
23 took place?

24 A. Yes.

25 Q. What geographical area did it take

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2 place in?

3 A. Brazil.

4 Q. Who was the primary point of contact  
5 between MCHA on that project?

6 A. The client contact?

7 Q. Yes. Who was your primary contact?

8 A. The client contact was Ciro Ahumada,  
9 the CEO, and me. I was a member of the board at  
10 the time.

11 Q. Now, in this document, are you  
12 referencing a particular event that took place in  
13 connection with Project Genesis?

14 A. Yes.

15 Q. Was there a no go -- sorry a go/no go  
16 discussion?

17 A. There was a one and-a-half-day board  
18 meeting that culminated in a go/no go discussion.

19 Q. When did that discussion take place?

20 A. Again, I believe it was summer 2015.

21 Q. Can you be any more specific?

22 A. No.

23 Q. Was it after August?

24 A. I don't recall.

25 Q. Was that during your tenure as



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2 president?

3 A. Yes.

4 Q. So that's in 2015, the summertime?

5 A. Correct.

6 Q. Now, generally speaking, what were  
7 Ms. Fischman's duties in connection with that  
8 transaction?

9 A. So, her job was to run that M&A  
10 transaction, working closely with me as a client  
11 and as her boss, and working with Ciro Ahumada as  
12 client and CEO of Qualicaps.

13 Q. When you say working with me as her  
14 client, in what capacity were you the client?

15 A. A lot of the requests passed through  
16 me. A lot of requests that would normally be made  
17 by a client went through me.

18 Q. So are the requests that you're  
19 referencing from Qualicaps?

20 A. Related to the -- to Project Genesis.

21 Q. The requests that were made related to  
22 project Genesis, did any of them originate from a  
23 point other than Qualicaps?

24 A. No.

25 Q. Okay.

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2 A. No.

3 Q. So when you're referring to yourself  
4 as a client, do you mean the agent of the client?

5 MS. GUERON: Objection.

6 MS. COLWIN: Objection.

7 A. No.

8 Q. Are you acting as a principal?

9 A. No.

10 Q. Okay.

11 A. I can't speak to whether agent is the  
12 appropriate word.

13 Q. You're acting in the capacity of an  
14 attorney or a non-attorney?

15 A. A non-attorney.

16 Q. And in that capacity, you're not the  
17 principal, right?

18 MS. GUERON: Objection.

19 A. We didn't use the word principal, so  
20 I'm not sure what the -- I didn't own the company,  
21 no.

22 Q. Okay. In a transaction, right, there  
23 are counterparties, correct?

24 A. Yes.

25 Q. You weren't one of the counterparties?

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2 A. I was on the Board of Directors and I  
3 was brought on the board, in part, to oversee M&A.

4 Q. Which Board of Directors were you  
5 referring to?

6 A. Qualicaps, Inc.

7 Q. So at the time of this transaction,  
8 you were on the Board of Directors of Qualicaps?

9 A. Correct.

10 Q. And you were also the president of  
11 MCHA?

12 A. Correct.

13 Q. So you were acting in a dual role?

14 MS. COLWIN: Objection.

15 A. Yes.

16 Q. Were you compensated for being part of  
17 the board at Qualicaps?

18 A. I had a contract with Qualicaps, and  
19 there was a dollar amount that was designated to  
20 cover my service, and I do not recall how that was  
21 paid.

22 Q. Was it a material por -- partial  
23 portion of your compensation?

24 MS. COLWIN: Objection.

25 A. No, it was not.

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2 Q. Was any portion of Project Genesis  
3 involving a legal risk analysis?

4 A. Yes.

5 Q. Who was responsible for that?

6 A. Jennifer.

7 Q. What is a legal risk analysis?

8 A. It can mean a lot of different things,  
9 but her responsibility was to identify the legal  
10 risks that existed within Genex, the company that  
11 was being acquired, with the support of Penyar  
12 Netta (phonetic), the outside law firm that was  
13 being used, and to deliver that information to the  
14 board and to Mr. Ahumada to help with the decision  
15 whether to go through with the acquisition.

16 Q. So, the scope of her job duties in  
17 connection with this transaction was to identify  
18 and communicate legal risks, correct?

19 A. That was one of her responsibilities,  
20 yes.

21 Q. Did she identify legal risks?

22 A. Yes, she did.

23 Q. Did she communicate legal risks?

24 A. Yes, she did.

25 Q. Were there any legal risks that she

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2 failed to identify?

3 A. Not that I'm aware of.

4 Q. Were there any legal risks that she  
5 failed to communicate?

6 A. Not that I'm aware of.

7 Q. Did she have any other job duties  
8 related to this transaction?

9 A. Oh, yes.

10 Q. Could you generally let me know what  
11 they are?

12 A. Identifying -- at the beginning,  
13 identifying financial advisors, working with the  
14 financial advisors, working with the outside  
15 counsel, supporting due diligence. Yeah. Just  
16 the full range of M&A transaction-related  
17 responsibilities.

18 Q. Did she faithfully execute those  
19 duties?

20 MS. COLWIN: Objection.

21 A. She executed those duties, not without  
22 problems.

23 MR. BERMAN: Objection to the  
24 nonresponsive portion of that answer.

25 Q. Are there any problems related to

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2 Project Genesis that are not reflected in this  
3 document?

4 A. Yes, there are.

5 Q. What types of problems?

6 A. There was her unwillingness to  
7 communicate with me as a client in a way that made  
8 the process run as smoothly as possible. We  
9 argued about the selection of financial advisors.  
10 We argued about the payment of financial advisors.  
11 There were various issues that arose earlier in  
12 the transaction, prior to this meeting. And there  
13 was also a time when I asked Jennifer if she  
14 needed help, that she appeared to be overwhelmed,  
15 that I was concerned about the quality of the  
16 work, and her -- part of her reaction -- response  
17 to me was to say, okay, then you run this deal,  
18 I'm off it. She then retracted that. But I would  
19 say that was a problem with this transaction.

20 Q. Any other problems that you didn't  
21 relate to me just now?

22 MS. COLWIN: Objection.

23 A. I -- there might be. Those are the  
24 things that come to mind right away.

25 Q. If you think of any others, will you

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2 let me know?

3 A. Yes.

4 Q. In your view, was Ms. Fischman's  
5 performance on the Project Genesis matter, would  
6 that merit a demotion, on its own?

7 A. No.

8 Q. Would it merit termination?

9 A. No.

10 Q. What about with respect to the  
11 interactions with Ms. Troccoli?

12 MR. FOR: You mean independently or  
13 cumulatively?

14 MR. BERMAN: Independently.

15 A. If it were truly in a vacuum, no, it  
16 would not.

17 Q. Does that apply to both termination  
18 and demotion?

19 A. Yes.

20 Q. What about with respect to the 4010  
21 issue?

22 MS. GUERON: Same question? In a  
23 vacuum?

24 MR. BERMAN: Same question.

25 A. Same question -- same answer. No.

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2 Q. What about Filtech, same answer?

3 A. Same answer.

4 Q. What about Comtrex, same answer?

5 A. Same answer.

6 Q. During your tenure as general counsel,  
7 did you ever discipline Ms. Fischman?

8 A. As general counsel?

9 Q. Yes.

10 A. I would not say I ever disciplined  
11 her, no.

12 Q. What about as president?

13 A. No, I never disciplined her.

14 Q. Did you ever issue her a written  
15 warning?

16 A. No.

17 Q. Did you ever inform her that she  
18 violated any company policy?

19 A. No.

20 Q. Any company procedure?

21 A. I notified her that I thought certain  
22 things she did were not in compliance with good  
23 practice and procedures, but no technical  
24 violation of any procedure, no.

25 Q. Okay. Ms. Fischman received a



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2 performance review after the November 2015 review.

3 Correct?

4 A. I believe so.

5 Q. Did you have any role in preparing  
6 that performance review?

7 A. No, I did not.

8 Q. Did you see a draft of that  
9 performance review before it was presented to  
10 Ms. Fischman?

11 A. I don't recall.

12 Q. Did you have any discussions with  
13 Ms. Saunders concerning delivery of Ms. Fischman's  
14 2016 performance review?

15 A. I don't recall.

16 Q. At the time when you were having  
17 discussions with Mr. Oliva about taking the  
18 general counsel position, did you inform him that  
19 there was an incumbent in the role in an acting  
20 capacity?

21 A. Yes.

22 Q. Did you have any conversations with  
23 Mr. Oliva concerning how the transition would be  
24 managed from an acting general counsel role under  
25 Ms. Fischman to a general counsel role under

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2 Mr. Oliva?

3 MS. GUERON: What time period are we  
4 talking about?

5 MR. BERMAN: I'm talking about the  
6 period leading up to his hiring.

7 A. I had various discussions with him  
8 about taking on the role.

9 Q. Did any of those discussions include  
10 transitioning Ms. Fischman out of the role?

11 A. Yes.

12 Q. Were any of these discussions after  
13 August of 2015?

14 A. They were all after August 2015. We  
15 had no discussions specifically about the role at  
16 that time.

17 Q. So, this is after you had first  
18 expressed a desire to terminate Ms. Fischman,  
19 correct?

20 MS. COLWIN: Objection.

21 A. My first meeting with Nick Oliva, my  
22 first discussion ever about the role, was after I  
23 had already had discussions internally at MCHA and  
24 with MCHC about terminating or demoting  
25 Ms. Fischman.

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2 Q. Did you at any point instruct  
3 Mr. Oliva to document his interactions with  
4 Ms. Fischman?

5 A. You mean after he began his role as  
6 general counsel?

7 Q. Yes.

8 A. No.

9 Q. Were you aware that he was documenting  
10 his interactions with Ms. Fischman?

11 A. I'm generally aware that, unlike me,  
12 Nick is a note taker.

13 Q. Do you know whether he takes notes of  
14 his interactions with any other personnel?

15 A. The answer is the same. I'm aware  
16 he's, in general, a note taker. That's all I  
17 know.

18 MR. BERMAN: Let's take a quick break.

19 (Whereupon, a recess was taken at this  
20 time.)

21 MR. BERMAN: We're back on the record.

22 Q. Ms. Costa, I asked you previously  
23 whether you had any discussions with Mr. Oliva  
24 about documenting Ms. Fischman's performance, and  
25 you asked me to clarify whether that was before or

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2 after he joined the company on November 30, 2015,  
3 correct?

4 A. Yes.

5 Q. Does your answer change if I change  
6 the time period to before he was brought on?

7 A. No, it doesn't.

8 Q. Okay. Thank you for clarifying that.

9 Did you have any discussions with  
10 Mr. Oliva before November 30th about your concern  
11 or potential desire to terminate Ms. Fischman?

12 A. Yes.

13 Q. What was the nature of those  
14 discussions?

15 A. When I saw Nick, after my birthday in  
16 August of 2015, he complained to me about his job  
17 and I complained to him about the person in the  
18 role of acting general counsel. And I said, too  
19 bad you won't -- you wouldn't consider the role of  
20 GC. And that was what I communicated to him.

21 Q. Did you communicate to Mr. Oliva that  
22 you had considered terminating Ms. Fischman?

23 A. I don't remember if I specifically  
24 said that.

25 Q. Wouldn't that be something that an

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2 oncoming general counsel ought to know?

3 A. Oh, eventually. I'm sorry. I was  
4 answering the question about that first  
5 interaction.

6 Q. Okay.

7 A. Subsequently, subsequent to that  
8 discussion, prior to him taking the role in  
9 November 30, I communicated to Mr. Oliva that I  
10 had considered terminating Ms. Fischman, but that  
11 I concluded that it was in the best interests of  
12 MCHA not to do so.

13 Q. Did you convey to Mr. Oliva the  
14 reasoning that underlaid your consideration of  
15 terminating Ms. Fischman?

16 A. Yes.

17 Q. What bases did you communicate to  
18 Mr. Oliva?

19 A. I do not remember if I shared the  
20 November 2015 document initially, but at some  
21 point I did, and at some point I elaborated on all  
22 of the points in that document, as well as the  
23 other issues that I did not include in that  
24 document.

25 Q. So when you say elaborated, you mean

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2 to?

3 A. To Mr. Oliva.

4 Q. Okay. Was that verbal?

5 A. Yes.

6 Q. Was it in writing?

7 A. No, it wasn't in writing.

8 Q. With respect to -- you just mentioned  
9 that there were issues that were not referenced in  
10 the performance review.

11 Have you told me about those yet?

12 A. No. Not unless it was responsive to a  
13 question you asked me, no.

14 Q. What other issues were there that were  
15 underlying your consideration of terminating  
16 Ms. Fischman that were not reflected in the  
17 November performance review?

18 A. There were underlying factors related  
19 to Comtrex, related to the 4010 issue, related to  
20 Genesis, although I told you what I could remember  
21 of those, related to Filtech; and then I talked  
22 about other things that had occurred and other  
23 information I had received during my tenure as  
24 acting general counsel.

25 Q. Okay. Maybe I'm not understanding,

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2 but didn't the November performance review cover  
3 Comtrex?

4 A. It touched on it in a couple of  
5 sentences.

6 Q. Okay.

7 A. It was --

8 Q. So there was more detail than that?

9 A. There was more detail than that, and I  
10 shared it with him.

11 Q. But is the high-level substance of the  
12 critique encapsulated within that review?

13 A. The most immediate issue was  
14 encapsulated in that review, yes.

15 Q. Okay. Same question with regard to  
16 the 4010?

17 A. That specific issue, the most  
18 immediate factors were encapsulated -- were  
19 summarized in that review.

20 Q. And the Filtech issues, were they also  
21 summarized in there?

22 A. Yes. Again, I don't want to give you  
23 the impression that I listed everything. I did  
24 not. I put enough information in there that I  
25 thought could communicate for purposes of that

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2 document. I didn't want it to be 20 pages long.

3 Q. Are you suggesting that it would be 20  
4 pages long if you provided more detail, or is that  
5 hyperbole?

6 A. That was hyperbole, but I could have  
7 filled 20 pages.

8 Q. You mentioned Comtrex, 4010, Genesis,  
9 which I think you went into more detail, correct?

10 A. Yes.

11 Q. Filtech?

12 A. Yes.

13 Q. And then you said other?

14 A. Yes.

15 Q. What was other?

16 A. The other was feedback I got from  
17 employees at MCHA and from clients. Other was my  
18 personal interactions with her. Other was  
19 concerns I had with her about her cultural  
20 insensitivity. Other was my sense that she was  
21 overwhelmed in the role, and additional points  
22 along those lines.

23 Q. Okay. Let's go through those.

24 Feedback from MCHA clients. Which  
25 ones?



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2 A. There were quite a few. I routinely  
3 solicited input for everyone who reported to me,  
4 not just Jennifer. I got negative feedback from  
5 Johei Takimoto. I got negative feedback from Bill  
6 Radlein. I got negative feedback from a number of  
7 business heads. At this moment, I can't remember  
8 specifically.

9 Q. If you recall any names other than  
10 Takimoto and Radlein, will you let me know?

11 A. Yes.

12 Q. We can leave a blank in the transcript  
13 if you want to fill it in.

14 Would you like to do that?

15 A. If I think of any, I will let you  
16 know.

17 MR. BERMAN: Please leave a gap in the  
18 transcript where she can fill in the names,  
19 if she wishes.

20 (INSERT) \_\_\_\_\_

21 Q. You said feedback from MCHA clients.  
22 Did you say also feedback from MCHA  
23 employees?

24 A. Yes.

25 Q. Which ones?

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2 A. Kathryn Roche, Andy Csaszar, Jordan  
3 Elbaum, Kelli Troccoli. To a lesser extent, Brian  
4 Connors. Those are the names that come to mind.

5 Q. Other than Ms. Troccoli, who we've  
6 discussed in part already, are there any documents  
7 reflecting the feedback that you just related to  
8 me from Mr. Takimoto, Mr. Radlein, any of the  
9 business heads, or any of the other individuals  
10 you just named?

11 A. The only thing I can recall, I know  
12 that there are documents that reference  
13 Mr. Takimoto's concerns about her, but that's only  
14 in relation to the Comtrex litigation. It started  
15 long before then. There is no documentation. No.  
16 In general, I would -- I don't recall.

17 Q. During the lead-up to Ms. Fischman  
18 transitioning to the acting general counsel role,  
19 did you have any discussions with her concerning  
20 reporting to Japan?

21 MS. GUERON: Objection.

22 A. Can you ask that question? I'm not  
23 sure exactly what you're getting it.

24 Q. Let me be more specific.

25 During your communications with

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2 Ms. Fischman from approximately December 2014  
3 until approximately mid-April 2015, you were  
4 helping her to prepare to transition for the new  
5 role of acting general counsel and CCO, correct?

6 A. Correct.

7 Q. Did any of your discussions include  
8 communications to Masanori Sakaguchi?

9 A. Yes.

10 Q. What was the general nature of that  
11 piece of discussion?

12 A. I generally recall she asked me, with  
13 reference to specific items, should I report this  
14 to Mr. Sakaguchi? Should I report this to  
15 Mr. Sakaguchi? I do not remember what topics  
16 those were. And I either said yes or no,  
17 depending on what the subject matter was.

18 Q. Was Mr. Sakaguchi one of  
19 Ms. Fischman's clients?

20 A. He was a client in the respect that  
21 they had co-clients, as I had explained earlier.

22 Q. I'm confused by your response, so  
23 could you clarify, because Mr. Sakaguchi is an  
24 attorney, correct?

25 A. Yes.

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2 Q. So when you refer to them having  
3 co-clients, that can mean different things. That  
4 could mean, for example, they're in a relationship  
5 as attorneys representing the same client, or it  
6 could mean something different.

7 How do you mean it?

8 A. So, I gave examples earlier. I  
9 explained earlier that there are times when we  
10 were both supporting the same business unit,  
11 sometimes on the same project. There are also  
12 instances where the client maybe did not  
13 communicate well in English, so we used MCHJ as a  
14 go-between. There were times when, because the  
15 client was located in Japan, we worked with MCHJ.  
16 They're -- I don't think I would describe MCHJ as  
17 a client.

18 Q. So then, just to make it more literal,  
19 do you literally mean to imply that Mr. Sakaguchi  
20 is a legal client of Ms. Fischman in the course of  
21 her conduct as an attorney?

22 A. I thought I just said -- maybe I  
23 misspoke. I thought I just said that I wouldn't  
24 characterize MCHJ as a client.

25 Q. You said MCHJ, and I'm referring to

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2 Mr. Sakaguchi individually.

3 A. Oh, I'm sorry.

4 Same answer. No.

5 Q. Thank you for clarifying. Okay.

6 In your own tenure as GCC -- general  
7 corp -- general counsel, excuse me, for MCHA, did  
8 you have difficulties communicating with  
9 Mr. Sakaguchi?

10 A. I did have some difficulty, yes, which  
11 is why sometimes I recommended that Jennifer not  
12 communicate with him.

13 Q. Okay. What was, in your view, the  
14 basis for the difficulty in communicating with  
15 Mr. Sakaguchi?

16 A. I found him to be a difficult person  
17 in general.

18 Q. Was he unusual in that respect,  
19 compared to other individuals you've interacted  
20 with in performing the course of your duties?

21 A. Yes, he was.

22 Q. During the time when Ms. Fischman was  
23 in the acting general counsel role, did she  
24 maintain an office?

25 A. An office in the offices of MCHA?

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2 Q. Yes.

3 A. Yes.

4 Q. Where was it in comparison to your  
5 office?

6 A. When she was acting general counsel,  
7 she sat in the office that had previously been  
8 mine as general counsel, which made us down the  
9 hall from each other.

10 Q. Okay. Thank you.

11 So if you wanted to meet with her  
12 during that time, you had the ability to do so,  
13 correct?

14 A. And vice versa, yes.

15 Q. The goals and plans that we saw in one  
16 of the performance reviews, do you recall we  
17 looked at those?

18 A. In general. I believe they're in  
19 every performance evaluation.

20 Q. Weren't there specific goals and plans  
21 that Ms. Fischman provided to you in connection  
22 with her assuming the role of acting general  
23 counsel?

24 A. They were more extensive than goals  
25 and plans that were included in any other review,

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2 yes.

3 Q. Is there a term we can use to relate  
4 to those, so that we'll know we're talking about a  
5 specific set of them?

6 A. The 2015 --

7 Q. Okay. So --

8 A. -- goals.

9 Q. The 2015 goals and plans?

10 A. Yes.

11 Q. The substance of the subject matter in  
12 those goals and plans, were those the same issues  
13 that you had been discussing during the December  
14 2014 to April 2015 period with Ms. Fischman?

15 A. At least in part, yes.

16 Q. Okay. So then, was it your  
17 understanding that she developed those 2015 goals  
18 and plans on the basis of your dialogue during  
19 that window of time from December of 2014 to April  
20 2015?

21 A. I expected her to do that, yes.

22 Q. Did those goals and plans comport with  
23 your expectation of the duties and  
24 responsibilities of the acting general counsel  
25 position?

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2 MS. GUERON: Objection.

3 A. I don't specifically recall what I  
4 thought at the time, but, sitting here, what I  
5 remember is I thought that those were good goals  
6 for her first year in that role.

7 Q. During your conversations with  
8 Ms. Fischman between December 2014 and April 2015,  
9 did there come a time when you instructed  
10 Ms. Fischman that she had to own the compliance  
11 function?

12 A. Yes.

13 Q. What does it mean to own the  
14 compliance function?

15 A. So, up until that point in time, she  
16 had been an individual contributor to the  
17 compliance function. She had led many compliance  
18 trainings, she had advised individual clients on  
19 compliance matters. What she had not done is  
20 viewed compliance as a whole, thinking about what  
21 are the issues that are important for compliance  
22 in our company that reflected what's happening in  
23 the industry, what the best in class compliance  
24 programs looked like, and what the specific issues  
25 that arose throughout the company suggested were



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2 important to us.

3 Q. Okay. So, with respect to those  
4 high-level compliance subjects -- I'll just use  
5 that term; is that okay?

6 A. That's fine.

7 Q. With respect to those subjects, did  
8 you perform those duties at any time prior to  
9 joining MCHA or its predecessor entities?

10 A. No.

11 Q. So, you learned how to do those after  
12 you first started in the position as general  
13 counsel, correct?

14 A. Yes. I created the compliance program  
15 from scratch. It was the first compliance program  
16 globally in Mitsubishi Chemical, and it started  
17 small and developed over time.

18 Q. Prior to becoming the acting general  
19 counsel, did Ms. Fischman deliver compliance  
20 training to any affiliates?

21 A. Yes.

22 Q. Did she deliver compliance training to  
23 any of the expatriate employees?

24 A. Yes.

25 Q. Was Ms. Fischman responsible for

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2 delivering expatriate training in New Jersey in  
3 2015?

4 A. Yes.

5 Q. What about in Virginia?

6 A. I don't -- I wasn't there, I don't  
7 specifically recall, but probably.

8 Q. Did you attend the compliance training  
9 Ms. Fischman attended in New Jersey?

10 A. I attended one training in New Jersey.

11 Q. Was Ms. Fischman in attendance as  
12 well?

13 A. Yes.

14 Q. Did you have seats at the function?

15 A. Yes.

16 Q. Were your seats adjacent?

17 A. Probably.

18 Q. Did you know she was there when you  
19 were there?

20 A. Yes.

21 Q. You saw her?

22 A. Yes.

23 Q. Did you direct her to not be present  
24 at that location?

25 A. No.

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2 Q. Did you direct her to leave the  
3 location when you saw her there?

4 A. No. She delivered a talk.

5 Q. Approximately how many people were in  
6 attendance?

7 A. I think it was well-attended. I think  
8 it was large. I don't recall. Dozens.

9 Q. Did you view it as important for  
10 Ms. Fischman to be there in the New Jersey  
11 presentation?

12 A. Yes.

13 Q. With respect to those conversations  
14 you had with Ms. Fischman between December 2014  
15 and April 2015, did those conversations -- or did  
16 conversations of that same type continue with  
17 Ms. Fischman after April of 2015?

18 A. Yes.

19 Q. And for approximately how long did  
20 those conversations continue, in terms of calendar  
21 time elapsing?

22 A. I was still giving her opportunities  
23 and developing her into October of 2015.

24 Q. So, from that period, between April of  
25 2015 and October of 2015, was Ms. Fischman

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2 responsible for the Brazilian acquisition?

3 A. Except when she briefly ceded it to  
4 me, yes.

5 Q. That's Project Genesis?

6 A. Yes.

7 Q. Was she responsible for compliance?

8 A. Yes.

9 Q. Was she responsible for supporting the  
10 affiliates?

11 A. Yes.

12 Q. And providing them with legal  
13 services?

14 A. Yes.

15 Q. And with respect to the position that  
16 Ms. Fischman had vacated, right, that was an  
17 assistant general counsel position?

18 A. Uh-huh.

19 THE REPORTER: Is that a yes?

20 THE WITNESS: I'm sorry. I'll wait.

21 Q. With respect to that position, was it  
22 an assistant general counsel position?

23 A. She vacated an assistant general  
24 counsel position.

25 Q. So, after she vacated that position

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2 and transitioned into the acting general counsel  
3 position, was the position she vacated backfilled?

4 A. We hired a corporate counsel. We  
5 didn't backfill assistant general counsel.

6 Q. All right. So, the corporate counsel  
7 position, was that Mr. Rose?

8 A. Yes.

9 Q. Is his first name Stephen?

10 A. Yes. With a P-H.

11 Q. And the corporate counsel position is  
12 one level below the assistant general counsel  
13 position, correct?

14 A. Correct.

15 Q. So, did Mr. Rose take on all the  
16 duties of the position that Ms. Fischman had  
17 vacated?

18 A. No.

19 Q. Did he take on any portion of those  
20 duties?

21 A. I believe so.

22 Q. Whatever portion that he did not take  
23 on, did that remain the duty and responsibility of  
24 Ms. Fischman?

25 A. She had the authority to delegate to

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2 the other lawyers in the department, and I believe  
3 I authorized a temp lawyer, but I don't have a  
4 specific recollection about a temp. But she had  
5 the authority to delegate how she chose.

6 Q. Irrespective of whether she could  
7 delegate the work or not, was she still ultimately  
8 responsible for performing that work?

9 A. Of course.

10 Q. Did you express concerns at any time  
11 with Ms. Fischman that you felt she had too much  
12 work on her plate?

13 A. Yes.

14 Q. Did you ever express concern to  
15 Ms. Fischman that you were worried she might have  
16 a mental breakdown?

17 A. No. That was a term she used when I  
18 communicated that I was concerned about her.

19 Q. Okay. Did you take any specific steps  
20 to address your concern that she had too much on  
21 her plate?

22 A. I -- yes, I did.

23 Q. What did you do?

24 A. I went to her. I told her I had  
25 concerns. I told her that there were a lot of

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2 people who could help her with workload, that I  
3 was happy to help her figure out how to delegate  
4 work. And, yeah, that's my response.

5 Q. Did there come a time where you  
6 decided to pursue a master's in business  
7 administration?

8 A. Yes.

9 Q. Approximately when was that?

10 A. I first proposed it in February 2011  
11 and then again in June 2011.

12 Q. When you say "proposed," who did you  
13 mean to propose it to?

14 A. To the president of MCHA, who was  
15 Mr. Tanaka at the time.

16 Q. Do you know whether he had any  
17 discussions concerning your request with anyone  
18 outside of MCHA?

19 A. To my knowledge, the only person he  
20 discussed it with was Ms. Yoshisato, who was the  
21 incoming president, and would be the one who was  
22 working with me while I did the program.

23 Q. While you were in that program, did  
24 that require travel out of the office?

25 A. Yes, it did.

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2 Q. Did it require international travel?

3 A. Yes, it did.

4 Q. Were you frequently called upon to be  
5 out of the office for this travel?

6 A. There were four modules, two weeks  
7 each, two of ten days, where I was outside the  
8 office. That was over a 16-month period. I was  
9 also out of the office for two modules at NYU  
10 Stern, so I didn't have to travel.

11 Q. During that time when you were out of  
12 the office pursuing the MBA, were you still  
13 concurrently performing your duties and  
14 responsibilities in your role at MCHA?

15 A. Yes. I was still general counsel,  
16 chief compliance officer.

17 Q. So you were working and studying at  
18 the same time?

19 A. Yes.

20 Q. Did you keep a calendar with your  
21 schedule from the time when you pursued the MBA?

22 A. Only whatever type of calendar I might  
23 have kept at the time in general.

24 Q. Would that calendar reflect your time  
25 out of office?



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2 A. I don't have that calendar. But, in  
3 the moment, it would have, yes.

4 Q. Is there any other document that still  
5 exists that would reflect your time out of the  
6 office while you were pursuing the MBA?

7 MS. GUERON: Objection.

8 A. I could figure out when I was out of  
9 the office by looking at the Web site of the  
10 program, but, no, there is no document.

11 Q. Okay. Does MCHA retain any  
12 attendance-related document for attorneys working  
13 there?

14 MS. GUERON: Objection.

15 A. We, during a period of time, filled  
16 out an attendance chart, which consisted of  
17 checking the box whether we were in or out with a  
18 key at the bottom which said, if we were out,  
19 where we were.

20 Q. Do you know whether those charts were  
21 utilized any time after 2010?

22 A. I believe they were, yes.

23 Q. Did there come a time when the company  
24 stopped using those charts?

25 A. Yes.

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2 Q. Approximately when did that take  
3 place?

4 A. I don't recall.

5 Q. Do you recall the year?

6 A. I don't recall.

7 Q. Do you know if they still have those  
8 charts in 2015?

9 A. I don't specifically recall.

10 Q. When those charts were no longer being  
11 used, was there any other type of document that  
12 took the place of the chart?

13 A. Not that I'm aware of.

14 Q. So, you were using these charts for  
15 some period of time, and then that practice  
16 ceased. Did any other process or procedure get  
17 implemented that would allow you to determine  
18 whether the lawyers working for the company were  
19 attending the office or not?

20 A. No.

21 Q. Were the employees at MCHA, during  
22 your tenure as president, issued any kind of  
23 electronic key fobs?

24 A. To get in and out of the office?  
25 There was an electronic key fob for all employees

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2 of MCHA.

3 Q. Do you know whether those key fobs  
4 record data on whether an attorney was present in  
5 the office or not?

6 A. I have no idea.

7 Q. Do you know who would know?

8 A. No.

9 Q. Do you know if Mr. Fukasawa would  
10 know?

11 A. I don't think he had anything to do  
12 with the New York office key fobs, but I don't  
13 know.

14 Q. Okay. You mentioned an IT person  
15 named Harry?

16 A. Yes. That's Mr. Fukasawa.

17 Q. That's the same person?

18 A. Yes.

19 Q. Okay. It says Hideo --

20 A. Hideo. Harry was his chosen nickname.

21 Q. If we wanted to determine whether any  
22 of those key fobs recorded the location of  
23 attorneys during the year 2015, who would we talk  
24 to, to find that out?

25 MS. GUERON: Objection.

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2 A. I think someone who works there now.

3 Q. If you were the president -- well, you  
4 were the president. If during 2015, during your  
5 tenure as president, you wanted to know that  
6 information, how would you go about determining  
7 the answer?

8 A. I would have asked Pat Saunders, who's  
9 no longer with the company. I would have asked  
10 Yuka Matsugu, who was the administrative assistant  
11 at the top of the chart.

12 Q. Okay. So, that would be a good place  
13 to start looking for the answer.

14 MS. GUERON: Objection.

15 A. I asked Yuka most things I didn't know  
16 the answer to in the first instance.

17 Q. Okay.

18 Did there come a time when  
19 Ms. Fischman was accused of engaging in unethical  
20 behavior?

21 MS. COLWIN: Objection.

22 A. Can you be more specific?

23 Q. During your tenure as president, was  
24 Ms. Fischman ever accused of engaging in unethical  
25 behavior as an attorney?

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2 MS. GUERON: Objection.

3 A. Nick came to me and said he had  
4 concerns that she was engaging in unethical,  
5 unprofessional behavior.

6 Q. Was this with respect to the  
7 Genomatica matter?

8 A. Yes.

9 Q. Was there any other instance that  
10 you're aware of, at any time during Jennifer's  
11 tenure, where she was being scrutinized on the  
12 basis of her ethical performance of her attorney's  
13 duties?

14 MS. GUERON: Objection.

15 MS. COLWIN: Objection.

16 A. No.

17 Q. Thank you.

18 The issue that you just mentioned in  
19 Genomatica, did that arise on or about January 19  
20 of 2016?

21 A. It was in January.

22 Q. It was in connection --

23 A. Oh, was it 2017? It was 2017.

24 Q. So January 19, 2017, right?

25 A. 2017.

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2 Q. Did you take any steps of your own to  
3 investigate those claims or concerns?

4 MS. GUERON: Objection.

5 A. I did not conduct an investigation. I  
6 reviewed the information provided to me by Nick  
7 Oliva.

8 Q. Did you direct anyone to perform an  
9 investigation?

10 A. Nick was engaged in an investigation.  
11 I did not need to ask him to.

12 Q. During your tenure as general counsel  
13 at the company, did you perform any  
14 investigations?

15 A. Many.

16 Q. Did they have a standard protocol for  
17 how you performed them?

18 A. We did not have a written protocol.

19 Q. Okay. Regardless of whether a  
20 protocol was written or unwritten, did you have a  
21 protocol that you used in performing  
22 investigations?

23 A. They varied by circumstance, but there  
24 were many, and there were some general practices I  
25 followed in the majority of cases.

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2 Q. So, did you take any independent steps  
3 to investigate those claims yourself?

4 MS. GUERON: Objection.

5 A. As general counsel, it was my  
6 responsibility, it was part of my role, to conduct  
7 investigations. I never asked the president to  
8 conduct an investigation.

9 Q. Okay. In connection with the  
10 investigation that Mr. Oliva performed, was that  
11 reduced to writing?

12 A. I don't recall what might have been  
13 reduced to writing.

14 Q. Did you ever receive an investigative  
15 report?

16 A. I don't recall seeing an investigative  
17 report. And I believe it would be responsive to  
18 one of your prior questions to say that Pat  
19 Saunders was also involved.

20 Q. I thought you had testified that you  
21 reviewed information provided to you by Mr. Oliva?

22 A. Yeah. Primarily, yes. But now I'm  
23 saying, I now realize that Pat Saunders was also  
24 involved.

25 Q. Okay.

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2 A. I do not recall if she ever presented  
3 me with information.

4 Q. Do you recall whether Mr. Oliva  
5 presented you with information?

6 MS. GUERON: Objection. Asked and  
7 answered.

8 A. He did.

9 Q. Was any of that information presented  
10 in writing?

11 A. He shared e-mails, which were in  
12 writing.

13 Q. Who were those e-mails between?

14 A. They were between and among Josh  
15 Berman, Jennifer Fischman, Nick Oliva, Tomoji  
16 Minami. I believe that's all. That's all I  
17 recall.

18 Q. Did you review any of the e-mails  
19 between Mr. Oliva and Mr. Minami concerning the  
20 amount of his settlement authority?

21 A. I was not involved in the settlement  
22 with discussion -- I'm sorry, ask the question  
23 again.

24 MR. BERMAN: Could you read it back,  
25 please?



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2 (Whereupon, the requested question was  
3 read back by the reporter.)

4 A. There were e-mail that referred to  
5 settlement authority and settlement amounts, yes.

6 Q. Do you know whether Mr. Oliva's  
7 investigation was complete?

8 MS. GUERON: Objection.

9 MS. COLWIN: Objection.

10 A. I don't know the details of his  
11 investigation.

12 Q. Did he provide you with the underlying  
13 materials that formed the basis of his  
14 investigation?

15 A. He provided me with underlying  
16 materials and with his conclusion.

17 Q. Did you request any other materials  
18 from him other than those that he provided to you?

19 A. I don't recall if I asked for anything  
20 specifically.

21 Q. In the course of your tenure as  
22 president, were there any other investigations  
23 that were performed by Mr. Oliva?

24 A. Relating to MCHA, no, I don't believe  
25 so. I don't recall.

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2 Q. Okay. During your tenure as either  
3 president or general counsel, did you supervise  
4 any other attorney staff who were performing  
5 investigations?

6 A. Yes.

7 Q. And with respect to those  
8 investigations, did you ever ask the attorneys who  
9 were performing the investigations for their  
10 underlying materials?

11 A. Yes.

12 Q. In any of those investigations, did  
13 you ask the attorneys to seek out additional  
14 information beyond what they had originally  
15 provided to you?

16 A. I may have.

17 Q. Did you do that with Mr. Oliva in  
18 connection with the investigation of Ms. Fischman?

19 A. I don't recall asking for anything  
20 specifically.

21 Q. So you don't know then whether there  
22 were other pertinent communications or documents  
23 that would have had a bearing on Mrs. Fischman's  
24 ethical discharge of her attorney's duties, do  
25 you?

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2 A. What I know is, at the time, I was  
3 satisfied with what I received.

4 Q. At the time, did you have any concern  
5 that Mr. Oliva's conduct might itself have  
6 violated ethical duties?

7 MS. GUERON: Objection.

8 A. I don't recall anything that suggested  
9 that to me.

10 Q. Well, you knew Mr. Oliva was involved  
11 in the Genomatica matter, correct?

12 A. Generally, yes.

13 MR. FORTINSKY: Objection to form.

14 MR. BERMAN: What's the objection to  
15 form?

16 MR. FORTINSKY: What does involved in  
17 the Genomatica matter mean?

18 Q. Was Mr. Oliva responsible, as general  
19 counsel, for the Genomatica litigation matter?

20 A. As general counsel, he was responsible  
21 for all litigation matters.

22 Q. Was he specifically and individually  
23 involved in the discussions with Mr. Berman  
24 concerning settlement of the Genomatica  
25 litigation?

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2 MS. GUERON: Objection.

3 A. I don't know.

4 Q. Did you ask him that?

5 A. We discussed it, not at the time, but  
6 we discussed it in the context of his  
7 investigation of the matter that led to Jennifer's  
8 termination.

9 Q. Did you speak to Mr. Berman about that  
10 matter?

11 A. I never spoke to Mr. Berman -- or I  
12 don't recall speaking to Mr. Berman directly.

13 Q. Did there come a time when you came to  
14 learn that Ms. Fischman claimed that Mr. Oliva had  
15 authorized for a settlement agreement?

16 A. In this litigation.

17 Q. In the Genomatica matter.

18 A. No. In this litigation, I came to  
19 learn that, yes.

20 Q. Oh, okay.

21 So prior to the commencement of this  
22 litigation, you were not aware that Ms. Fischman  
23 was making that allegation, correct?

24 MS. COLWIN: Objection.

25 A. I did not hear that allegation, no.

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2 Q. Did you take any steps at the time  
3 that these ethical allegations arose in January of  
4 2017 to see whether there were any other  
5 potentially culpable actors in connection with the  
6 settlement of the Genomatica matter?

7 A. Again, I was not investigating the  
8 matter. I relied on what I learned from Pat  
9 Saunders and Nick Oliva and what I read in the  
10 documents that were presented to me.

11 Q. Did you consider the possibility that  
12 Nick Oliva could have had a conflict of interest  
13 in investigating that issue?

14 MS. COLWIN: Objection.

15 MS. GUERON: Objection.

16 A. No, I didn't.

17 Q. During your tenure as general counsel,  
18 were there investigations that you were  
19 responsible for where outside counsel was called  
20 in?

21 A. Yes.

22 Q. Were any of those instances where  
23 outside counsel was retained for the  
24 investigation, for the purpose of avoiding any  
25 potential conflicts?

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2 A. At times, yes.

3 Q. Was considering the possibility of  
4 potential conflicts part of your protocol for  
5 conducting investigations?

6 A. Yes.

7 Q. So, is there some reason why that  
8 element of your protocol wasn't considered in this  
9 investigation of Ms. Fischman?

10 MS. GUERON: Objection.

11 MS. COLWIN: Objection.

12 A. Because the basis for the decision to  
13 terminate Jennifer was not limited to what  
14 occurred in the communications with Genomatica.  
15 It was also how she responded after the issue was  
16 discovered, and it boiled down to a trust issue.

17 Q. So, Ms. Fischman was terminated  
18 because there was a trust issue?

19 MS. GUERON: Objection --

20 MS. COLWIN: Objection --

21 MS. GUERON: -- mischaracterizes her  
22 testimony.

23 Q. Did I get that wrong?

24 A. The fact that Nick Oliva felt that he  
25 could no longer trust her was important in my

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2 approving her termination. I cannot speak to what  
3 were the grounds for him choosing to terminate  
4 her.

5 Q. Were there any other grounds that  
6 formed the basis of your approving his decision to  
7 terminate Ms. Fischman?

8 A. I would say it was my concern about  
9 her failure to communicate about the Genomatica  
10 settlement. It was her failure to communicate in  
11 a way I thought was responsible after Nick learned  
12 about the offer to Genomatica, and it was Nick's  
13 feeling that it was going to be very difficult for  
14 him to continue to work with someone who he didn't  
15 feel like he could trust.

16 MR. BERMAN: Pause there a second.

17 Could you just repeat the response back to  
18 me?

19 (Whereupon, the requested answer was  
20 read back by the reporter.)

21 A. So, I'd like to clarify. It was not  
22 his feeling. It was what he told me in response  
23 to the situation. I was not assuming his feeling.  
24 It was based on what he said to me.

25 Q. That is with respect to the third

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2 basis, that it was hard to work with someone that  
3 there was no trust with?

4 A. Correct.

5 Q. I just wanted to make sure about that.  
6 So, with respect to the first of those three  
7 bases, the failure to communicate regarding the  
8 Genomatica settlement, how do you know that  
9 Ms. Fischman failed to communicate regarding the  
10 Genomatica settlement without looking at all the  
11 communications related to that matter and its  
12 settlement?

13 MS. COLWIN: Objection.

14 A. No, I looked at them all.

15 Q. You looked at all of the e-mails  
16 concerning the Genomatica settlement?

17 A. I looked at what I was presented with,  
18 yes.

19 Q. But you don't know if you were  
20 presented with all of those communications, do  
21 you?

22 A. No, I don't.

23 Q. Would it surprise you to learn that  
24 there were additional communications about the  
25 settlement of the Genomatica matter?



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2 MS. COLWIN: Objection.

3 A. Whether I was surprised would depend  
4 on the documents.

5 Q. Okay. Do you have any understanding  
6 of what the scope of --

7 MR. BERMAN: Withdrawn.

8 Q. Are you familiar with the history of  
9 the settlement demands in the Genomatica matter?

10 A. I was not, no.

11 Q. So you weren't provided with that  
12 information at the time of the investigation?

13 MS. COLWIN: Objection.

14 A. That's not what I meant to say. I  
15 thought you asked me a different question. I was  
16 not in the course of the litigation. Okay? Let  
17 me separate in time between prior to Tomoji Minami  
18 saying, I just learned that an offer was made  
19 almost two weeks ago, what's going on? What  
20 happened before that and what happened from that  
21 moment forward. I thought your question referred  
22 to what happened before that moment. I was not  
23 involved, other than maybe general periodic  
24 reports from Nick in the course of his routine  
25 reporting to me.

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2 Q. Okay. Thank you for clarifying your  
3 response.

4 What I'm asking you about, temporally,  
5 is information after January 19 of 2017. So my  
6 question is --

7 A. January 19th?

8 Q. After Minami informed Nick there had  
9 been a settlement offer, we didn't know about it,  
10 I'm paraphrasing, but we're on the same page here,  
11 right, January 19th --

12 A. Okay.

13 Q. -- there's some kind of communication,  
14 and that's the gist of it, right?

15 A. If that's the date, yes, sometime in  
16 January, there was an e-mail received by Nick from  
17 Tomoji Minami.

18 Q. And Nick presented you with that  
19 e-mail, correct?

20 A. Yes.

21 Q. And he presented you with other  
22 e-mails about that same settlement, correct?

23 A. Yes.

24 Q. Did Nick present you with information,  
25 after January 19, that conveyed the history of the

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2 settlement demands made in that matter?

3 MS. COLWIN: Objection.

4 A. Yes.

5 Q. How was that presented to you?

6 A. What I saw was a combination of --  
7 what I saw were e-mails, and I also heard a  
8 narrative from Nick.

9 Q. Okay. Were you provided information  
10 about a six-figure settlement demand made by the  
11 adverse party in that matter?

12 A. I don't know.

13 Q. Were you provided with information  
14 about a 1.5 million-dollar settlement demand made  
15 by the adverse party in that matter?

16 A. I don't recall.

17 Q. Were you provided information about  
18 the dollar amount of settlement authority provided  
19 by MCHA's client in connection with the Genomatica  
20 matter?

21 THE WITNESS: I need that question  
22 again.

23 (Whereupon, the requested question was  
24 read back by the reporter.)

25 A. I have no specific memory of that.

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2 Q. Do you know what an ENE is?

3 A. I believe it's a form for settlement  
4 or mediation.

5 Q. Okay. Are you aware that there was an  
6 ENE connection with the Genomatica matter?

7 A. I was generally aware at the time,  
8 yes.

9 Q. Were you provided with information  
10 about the scope of an authority that MCHA had to  
11 settle the Genomatica matter at the ENE?

12 MS. GUERON: Objection.

13 A. I remember there were discussions. I  
14 have no specific recall.

15 Q. Do you know the dollar amount of the  
16 settlement authority that MCHA had in connection  
17 with that ENE?

18 A. Sitting here, I don't recall.

19 Q. Was it provided to you by Nick?

20 MS. GUERON: Objection.

21 MS. COLWIN: Objection.

22 A. I believe so.

23 Q. Would it surprise you to learn that  
24 there was a written document that was provided to  
25 MCHA with unlimited discretion to settle the

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2 Genomatica matter at the ENE?

3 MS. GUERON: Objection.

4 A. If you're suggesting that the client  
5 gave MCHE unlimited discretion?

6 Q. MCHE?

7 A. I'm sorry. MCHA unlimited discretion  
8 without providing a range? That would surprise  
9 me.

10 Q. Did Nick ever present you a document  
11 reflecting the extent of the settlement authority  
12 actually possessed by MCHA at the ENE?

13 A. I don't recall.

14 (Plaintiff's Exhibit 13, one-page  
15 document Bates stamped DEF-001762,  
16 confidential, marked for Identification, as  
17 of this date.)

18 Q. For identification, Plaintiff's 13 is  
19 a one-page document Bates stamped DEF-001762.

20 A. Yes.

21 Q. Ms. Costa, are you looking at the  
22 document?

23 A. Yes, I am.

24 Q. Have you seen it before?

25 A. I don't recall.

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2 Q. Can you please read the full text of  
3 the document to yourself and let me know when  
4 you're done?

5 A. I have.

6 Q. Okay. What is this document?

7 A. This is a document which is consistent  
8 with what was sometimes required when going into  
9 settlement discussions that indicates that the  
10 person attending on behalf of the company has  
11 authority to settle that day, without needing to  
12 go back to the client to get their approval.

13 Q. Okay. Do you see the reference in the  
14 second sentence to "early neutral evaluation"?

15 A. Yes.

16 Q. Does that comport with your  
17 understanding of what an ENE is?

18 A. Generally, yes.

19 Q. So, is that a form of settlement  
20 conference?

21 A. I believe it was.

22 Q. During your time at Cleary, you were a  
23 litigator, correct?

24 A. Yes.

25 Q. Did you attend settlement conferences?

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2 A. I attended far more at Mitsubishi  
3 Chemical, but, yes.

4 Q. In the course of your litigation  
5 experience attending settlement conference, is it  
6 unusual for a judge to require the parties to be  
7 present with full settlement authority?

8 A. No. That's standard.

9 Q. So does it surprise you that there was  
10 a letter of authorization indicating what the  
11 settlement authority was --

12 MS. GUERON: Objection.

13 A. -- for the ENE?

14 MS. GUERON: Objection.

15 MS. COLWIN: Objection.

16 A. Yeah, I think you're mischaracterizing  
17 the meaning of this letter. So, this letter  
18 doesn't surprise me. It was required. It's  
19 standard. I've seen letters like this before.  
20 This does not say he had authority to settle for  
21 any amount. He said he had authority to conclude  
22 a settlement for -- in the context of that ENE  
23 conference.

24 Q. I'll direct your attention to the last  
25 sentence of the document. Do you see that

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2 sentence, it says, "there are no limitations or  
3 reservations on your authority to explore  
4 settlement options fully, change the settlement  
5 position of the company at any time, or agree to  
6 settlement terms that are satisfactory and  
7 acceptable, in the exercise of your full and  
8 plenary discretion."

9 Do you see that sentence?

10 A. I see that sentence.

11 Q. Are you familiar with the word  
12 plenary?

13 A. Yes.

14 Q. Do you know what that means?

15 A. Well, why don't you tell me what you  
16 think it means, so I can confirm if I --

17 Q. What's --

18 A. -- share your understanding.

19 Q. What's your understanding of the  
20 meaning of that term?

21 MS. GUERON: Objection.

22 MS. COLWIN: Objection.

23 A. I don't want to define terms.

24 Q. Okay. I'll represent to you that  
25 plenary means absolutely.



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2 MS. GUERON: There's no question  
3 pending.

4 Q. So, does that change your  
5 interpretation of what that last sentence means?

6 A. No, it doesn't. I read it differently  
7 than you do, and I also know what Mitsubishi's  
8 policies and practices were, and I interpret this  
9 letter in light of what their policies and  
10 practices were.

11 Q. Was this letter presented to you at  
12 part of Nick's investigation?

13 A. I don't specifically recall, but it  
14 wouldn't have surprised me one way or the other.

15 MR. BERMAN: This will be 14.

16 (Plaintiff's Exhibit 14, a multipage  
17 document Bates stamped DEF-001828 to 001830,  
18 confidential, marked for Identification, as  
19 of this date.

20 MR. BERMAN: For identification,  
21 Plaintiff's 14 is a multipage document Bates  
22 stamped DEF-001828 to 1830.

23 THE WITNESS: Yes.

24 Q. Ms. Costa, have you seen this document  
25 before?

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2 A. Yes.

3 Q. Can you tell me what it is?

4 A. It is a redacted version of  
5 communications between Nick Oliva and Tomoji  
6 Minami relating to settlement of the Genomatica  
7 case in November 2016.

8 Q. Okay. When did you see this document  
9 first?

10 A. I don't recall.

11 Q. Was this document presented to you by  
12 Nick in the course of his investigation?

13 A. I don't recall.

14 Q. Okay. Can you explain to me --

15 MR. BERMAN: Withdrawn.

16 Q. Do you have an understanding of what  
17 the first page means, where its text looks like  
18 from Tomoji to Nick?

19 MS. GUERON: Objection. I don't  
20 understand the question.

21 Q. Do you understand what's happening in  
22 this e-mail, what's being communicated between  
23 Tomoji and Nick?

24 MS. COLWIN: Objection.

25 MS. GUERON: Objection.

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2 A. What I understand this to mean is  
3 communications between them relevant to whatever  
4 their discussions were as of November 2016.

5 Q. So you don't know whether this  
6 pertains to the Genomatica litigation?

7 A. Oh, I'm sorry. Relating to the  
8 Genomatica litigation.

9 Q. Okay. Does this pertain to settlement  
10 authority with respect to Genomatica?

11 MS. GUERON: Objection. Foundation.

12 A. It is a communication where they refer  
13 to settlement authority.

14 Q. So, would it surprise you to learn  
15 that there was consideration of settlement  
16 authority in the amount of \$1 million in  
17 connection with that matter?

18 A. No.

19 Q. Do you know what this matter  
20 ultimately settled for?

21 A. I don't recall.

22 Q. Do you see on the second page of the  
23 document, towards the top center, where there's a  
24 communication from Nick to Tomoji, and it looks  
25 like there's some quoted language below that? Do

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2 those carat symbols indicate quoted language,  
3 usually?

4 MS. GUERON: I'm sorry, where is that?

5 MR. BERMAN: This text, first page,  
6 DEF-1829 at the top.

7 A. Yeah. I think that just means it's  
8 forwarded.

9 Q. Forwarded, okay.

10 Does that indicate that there was some  
11 consideration of a settlement authority in the  
12 amount of 500,000 or above?

13 MS. GUERON: Objection.

14 MS. COLWIN: Objection.

15 A. The document speaks for itself. I  
16 don't know actually what was discussed.

17 MR. BERMAN: Mark this one as 15.

18 (Plaintiff's Exhibit 15, a multipage  
19 document Bates stamped DEF-001858 through  
20 001862, confidential, marked for  
21 Identification, as of this date.)

22 MR. BERMAN: For identification,  
23 Plaintiff's 15 is multipage document bearing  
24 Bates stamp DEF-001858 through 1862. Let me  
25 know when you're ready, Ms. Costa.

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2 THE WITNESS: Yes.

3 Q. Have you seen this document before?

4 A. Yes.

5 Q. Can you tell me what it is?

6 A. It is further communication between  
7 Nick and Tomoji in November -- early November 2016  
8 relating to the possible settlement of the  
9 Genomatica case.

10 Q. When is the first time you saw this  
11 document?

12 A. I don't recall.

13 Q. Was this document presented to you by  
14 Nick in the course of his investigation?

15 A. I don't recall.

16 MR. BERMAN: Mark this 16, please.

17 (Plaintiff's Exhibit 16, a two-page  
18 document Bates stamped DEF-000869 to 000870,  
19 marked for Identification, as of this date.)

20 MR. BERMAN: For identification,  
21 Plaintiff's 16 is a two-page document Bates  
22 stamped DEF-000869 to 70.

23 Q. Are you looking at the document?

24 A. Yes.

25 Q. Have you seen it before?

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2 A. I don't recall seeing this before.

3 Q. Okay. Do you know whether this  
4 document was presented to you by Nick during the  
5 course of his investigation?

6 A. I don't recall seeing it.

7 Q. Do you recall any conversations with  
8 Nick about the consideration of \$1 million of  
9 settlement authority?

10 A. I don't recall.

11 MR. BERMAN: Mark this one 17.

12 (Plaintiff's Exhibit 17, a multipage  
13 document Bates stamped DEF-001746 to 1748,  
14 confidential, marked for Identification, as  
15 of this date.)

16 MR. BERMAN: For identification, 17 is  
17 a multipage document Bates stamped  
18 DEF-001746 to 1748.

19 Q. Are you looking at the document?

20 A. Yes.

21 Q. Have you seen it before?

22 A. I don't recall.

23 Q. Can you tell me what it is?

24 A. It is an e-mail communication among  
25 Nick, Jennifer, Tomoji, Josh, and Takimoto

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2 relating to the Genomatica case and settlement,  
3 potential settlement.

4 Q. And so, the first page of this  
5 document, do you agree that it's an e-mail from  
6 Nick Oliva to Jennifer Fischman, Tomoji Minami,  
7 and cc'ing Joshua Berman and Johei Takimoto?

8 A. That's what it appears to be.

9 MS. GUERON: Objection. She's not an  
10 author nor a recipient. So, I have a  
11 continuing objection to asking her about  
12 something she's not e-mailed on.

13 MR. BERMAN: Okay.

14 Q. Do you see the reference to  
15 Takimoto-san at the bottom?

16 A. Yes.

17 Q. Is that how Mr. Takimoto was referred  
18 to, typically?

19 A. In some contexts. He was referred to  
20 generally by me as Johei.

21 Q. Did Nick provide you with a copy of  
22 this document in connection with his  
23 investigation?

24 A. I don't remember.

25 Q. Do you see on the second page of the

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2 document, Bates stamped 1747, the first full  
3 paragraph underneath the redaction?

4 A. Yes.

5 Q. Do you see the sentence midway through  
6 the paragraph that says, "we finally offered  
7 2.0" -- with a dollar sign in front of the 2.0 --  
8 "with deferred payments over time and interest"?

9 A. Yes.

10 Q. Do you have any comprehension of what  
11 that is referring to?

12 A. No.

13 Q. Do you know whether MCHA ever made a  
14 settlement offer in the Genomatica matter to  
15 settle the matter for \$2 million?

16 MS. COLWIN: Objection.

17 A. I have no knowledge. I do not know.

18 Q. So you don't know one way or the  
19 other?

20 A. I don't know one way or the other.

21 Q. Do you recall earlier when I asked you  
22 whether Nick provided you with the history of the  
23 settlement demands --

24 A. Yes.

25 Q. -- in the litigation?



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2 If there was a 2.0 million-dollar  
3 offer, would you have expected it to be included  
4 in that information?

5 MS. GUERON: Objection.

6 MS. COLWIN: Objection.

7 A. All I know is that this was two months  
8 previously, and I don't, sitting here, remember  
9 what might have happened between November 2016 and  
10 January 2017 that could impact the client's  
11 attitude about settlement. I don't know.

12 Q. I mean, this allegation that was  
13 leveled at Ms. Fischman is very serious, would you  
14 agree?

15 A. I would agree.

16 MS. COLWIN: Objection.

17 Q. An attorney could get disbarred if, in  
18 fact, an ethical violation of the type alleged had  
19 transpired, correct?

20 A. I don't have an opinion on that.

21 MS. GUERON: Objection.

22 MS. COLWIN: Objection.

23 Q. Okay. But did you take the matter  
24 seriously?

25 A. I took the matter seriously, yes.

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2 Q. And, in your view, was it, therefore,  
3 appropriate and required for a full investigation  
4 to take place?

5 MS. GUERON: Objection.

6 MS. COLWIN: Objection.

7 A. I believe a full investigation took  
8 place.

9 Q. Okay. And if a full investigation  
10 took place, then you should have been presented  
11 with the full results, correct?

12 MS. GUERON: Objection.

13 MS. COLWIN: Objection.

14 A. I have no memory of what I was  
15 presented with.

16 Q. I'm not asking you what has actually  
17 happened, I'm asking you what should have happened  
18 if it was done properly.

19 MS. GUERON: That's a hypothetical.

20 She's a fact witness.

21 MR. BERMAN: She's allowed to answer  
22 hypothetical questions.

23 MS. GUERON: She's a fact witness --

24 MR. BERMAN: Are you instructing the  
25 witness not to answer the question?

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2 MS. GUERON: No.

3 A. I would expect that I would be  
4 presented with all of the relevant information.

5 Q. And that would include a comprehensive  
6 list of the settlement offers and demands made in  
7 the matter?

8 MS. GUERON: Objection.

9 A. I can't say, sitting here, what would  
10 have been relevant.

11 Q. Don't you think the settlement history  
12 of the matter would be relevant to the  
13 determination of whether Ms. Fischman made an  
14 authorized or unauthorized settlement demand?

15 MS. COLWIN: Objection.

16 MS. GUERON: Objection.

17 A. I think all information about her  
18 authority would be relevant.

19 MR. BERMAN: Thank you.

20 Mark this, please.

21 (Plaintiff's Exhibit 18, multipage  
22 document Bates stamped DEF-1809 to 1812,  
23 confidential, marked for Identification, as  
24 of this date.)

25 MR. BERMAN: For identification,

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2 Plaintiff's 18 is a multipage document  
3 bearing Bates stamp DEF-1809 to 1812.

4 Q. Are we ready to proceed?

5 Ms. Costa, are you ready to continue?

6 A. Yes.

7 Q. Are you looking at the document?

8 A. I've looked at the document.

9 Q. Have you seen it before?

10 A. Yes.

11 Q. Can you tell me what it is?

12 A. It is an e-mail communication between  
13 Jennifer and Nick dated December 29, 2016, with  
14 the last portion redacted and with a different  
15 date.

16 Q. Can you tell me when the first time  
17 you saw this document was?

18 A. I don't recall.

19 Q. Did Nick provide this to you during  
20 the course of his investigation?

21 A. I don't recall.

22 Q. During the course of Nick's  
23 investigation, did you ever hear Jennifer's side  
24 of the story?

25 A. Jennifer never came to speak to me

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2 about it, and I was not conducting the  
3 investigation, so I did not speak to her directly.

4 Q. Were you ever presented with her side  
5 of the story?

6 MS. GUERON: Objection.

7 A. I -- only through Nick and Pat.

8 Q. When you say only through Nick and  
9 Pat, what were you presented with?

10 MS. GUERON: Objection.

11 MS. COLWIN: Objection.

12 A. I was presented with e-mails from  
13 Jennifer to Nick and others, where she made  
14 various comments as a follow-up to that original  
15 e-mail that triggered the investigation.

16 Q. So you're referring to e-mail  
17 communications between Ms. Fischman and  
18 Mr. Tomoji, correct?

19 A. Ms. Fischman and Mr. Tomoji. Possibly  
20 others. I don't recall.

21 Q. Other than the e-mail communications,  
22 did you ever provide Ms. Fischman with an  
23 opportunity to tell you in her own words what  
24 happened?

25 MS. GUERON: Objection.

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2 A. Again, she did not report to me, and I  
3 was not conducting the investigation, so, no, I  
4 did not ask her.

5 Q. Did anyone get her own explanation of  
6 what happened and present it to you?

7 MS. GUERON: Objection.

8 MS. COLWIN: Objection.

9 A. I heard a number of accounts from Nick  
10 and from Pat that they said were Jennifer's  
11 statements on the matter. So, we're talking  
12 third, fourth-hand information. Third-hand.

13 Q. Okay. Thank you for clarifying.

14 Were you provided with any written  
15 statement written by Jennifer concerning this  
16 matter?

17 A. Other than her e-mail, I don't believe  
18 so.

19 Q. Okay. So you didn't receive any  
20 written statement from Jennifer as part of the  
21 investigation?

22 MS. GUERON: Objection.

23 A. I do not recall seeing a written  
24 statement from Jennifer.

25 Q. Okay. And you didn't request a verbal

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2 statement from Jennifer, did you?

3 A. I did not conduct interviews, no.

4 Q. Did you request a meeting with  
5 Jennifer and Nick?

6 MS. GUERON: Objection.

7 A. No.

8 Q. Did you request a meeting with  
9 Jennifer and Pat Saunders?

10 A. No.

11 MS. GUERON: Objection.

12 Q. Didn't you want to know from her what  
13 her side of the story was?

14 MS. GUERON: Objection.

15 MS. COLWIN: Objection.

16 A. By this time, Jennifer had  
17 communicated that she didn't want to work in the  
18 New York office because I was there. She turned  
19 around and walked the other way when she saw me.  
20 I did not believe that my direct involvement  
21 speaking to Jennifer would be a contributor to an  
22 effective investigation, and my door was open; if  
23 she had ever indicated an interest in speaking to  
24 me, I would have spoken to her. But I want to  
25 state again, I did not conduct the investigation,

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2 and no president of MCHA, in my memory, was ever  
3 directly involved in an investigation.

4 Q. Did there come a time when you learned  
5 that Ms. Fischman's position was that Mr. Oliva  
6 had authorized her settlement communication?

7 A. In this litigation, yes.

8 Q. And was there a particular occasion  
9 upon which Ms. Fischman alleged that Mr. Oliva  
10 authorized her communication?

11 MS. GUERON: Objection.

12 A. I don't understand your question.

13 MR. BERMAN: I'll rephrase the  
14 question.

15 Q. Are you aware that there's an  
16 allegation in this litigation that on January 5,  
17 Ms. Fischman and Mr. Oliva met, discussing the  
18 settlement authority?

19 A. I heard about that in Ms. Fischman's  
20 deposition.

21 Q. Okay. Was any of that information  
22 included in Nick's report concerning the  
23 investigation?

24 MS. GUERON: Objection.

25 MS. COLWIN: Objection.



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2 A. To my knowledge, there was no meeting.

3 Q. That's not what I asked you. I asked  
4 you if there was any information about a meeting  
5 that was included in the information that Nick  
6 relayed to you.

7 MS. GUERON: Objection.

8 MS. COLWIN: Objection.

9 A. Nick did not communicate the existence  
10 of such a meeting.

11 Q. Did he say anything to the effect of,  
12 no meetings took place?

13 MS. GUERON: Objection.

14 A. I don't recall.

15 Q. Did you ask Mr. Oliva whether, at any  
16 time, he had authorized any conveyance of a  
17 settlement demand by Ms. Fischman?

18 A. Yes, I did.

19 Q. And what was his response?

20 A. His response was, there had been  
21 various discussions leading up to that time about  
22 possible levels of authority, but that,  
23 immediately preceding that offer, there was no  
24 authority given.

25 MR. BERMAN: Okay. Mark this, please.

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2 (Plaintiff's Exhibit 19, a one-page  
3 document Bates stamped DEF-002257,  
4 confidential, marked for Identification, as  
5 of this date.)

6 MR. BERMAN: For identification,  
7 Plaintiff's 19 is a one-page document Bates  
8 stamped DEF-002257.

9 Q. Ms. Costa, are you looking at the  
10 document?

11 A. Yes.

12 Q. Have you seen it before?

13 A. I don't specifically recall, but it  
14 appears to be addressed to me.

15 Q. Can you tell me what it is?

16 A. It is an e-mail from Brian Connors to  
17 me and Katherine Todarello dated September 6,  
18 2016, which has, at the bottom of the thread, an  
19 e-mail dated August 30, 2016.

20 Q. Okay. You see the top of this  
21 document concerning auditing of MCHA in early  
22 2017?

23 A. Yes.

24 Q. Do you know whether there was an audit  
25 of MCHA in early 2017?

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2 A. I recall there was some sort of audit.

3 Q. Okay. That was during your tenure as  
4 president still?

5 A. Yes.

6 Q. So if there was an audit of MCHA  
7 during that time, you would have known about it,  
8 right?

9 A. Yes.

10 Q. And that audit was performed by who?

11 A. Individuals from the internal audit  
12 office of MCHC.

13 Q. Okay. Is Hideo Inatomi --

14 MR. BERMAN: Withdrawn.

15 Q. During your tenure as general counsel  
16 at Mitsubishi, did there come a time when Jennifer  
17 Fischman was sent to you in Japan?

18 A. I'm sorry, give me the time frame  
19 again?

20 Q. During your time as general counsel,  
21 in the general counsel position --

22 A. Yes. Yes.

23 MS. GUERON: Wait for his question.

24 Q. So, just to repeat it. During that  
25 period of time, when you were still general

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2 counsel --

3 A. Yes.

4 Q. -- did Ms. Fischman travel to Japan?

5 A. She did.

6 Q. Do you know how long, approximately,  
7 she had been at the company when that trip took  
8 place?

9 A. No, I don't.

10 Q. Do you recall whether it was in her  
11 first year working at the company?

12 A. Probably would not have been.

13 Q. Okay. And when Mr. Oliva was hired,  
14 did he travel to Japan in his first year at the  
15 company?

16 A. Do you mean as general counsel, when  
17 he was hired as general counsel?

18 Q. Yes.

19 A. Okay. I'm sorry. I need the previous  
20 question again. I'm a little confused about time  
21 frames.

22 (Whereupon, the requested question was  
23 read back by the reporter.)

24 Q. In Mr. Oliva's first year in his  
25 tenure as general counsel, did he travel to Japan?

1 D. Costa - Confidential

2 A. Yes, he did.

3 Q. And, in fact, before he even rejoined  
4 the company as general counsel, were plans already  
5 in motion to have him travel to Japan?

6 A. I don't recall that.

7 Q. Do you recall any discussions prior to  
8 November 30, 2015 concerning him traveling to  
9 Japan?

10 A. I don't recall.

11 MR. BERMAN: Mark this, please.

12 (Plaintiff's Exhibit 20, a multipage  
13 document Bates stamped DEF-2062 to 2065,  
14 confidential, marked for Identification, as  
15 of this date.)

16 MR. BERMAN: For identification,  
17 Plaintiff's 20 is a multipage document Bates  
18 stamped DEF-2062 to 2065.

19 THE WITNESS: Yes, I read it.

20 Q. Have you seen this document before?

21 A. Yes.

22 Q. Can you tell me what it is?

23 A. It is an e-mail thread among Nick  
24 Oliva, Ken Fujiwara and me, November the 30th,  
25 2015.

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2 Q. I'll direct your attention to the very  
3 bottom of the second page, continuing on to the  
4 third page. So page 2063 to 2064.

5 A. Yes.

6 Q. And on the top of 2064, do you see the  
7 first full paragraph there?

8 A. Yes.

9 Q. Does that refresh your recollection as  
10 to whether Nick went to Japan in his first year as  
11 general counsel?

12 A. I think I told you he did go to Japan  
13 his first year as general counsel.

14 Q. Does it refresh your recollection as  
15 to whether there were any discussions before him  
16 coming in November 30?

17 A. This looks like, in the week or two  
18 before he started, Ken Fujiwara requested that  
19 Nick go to Tokyo.

20 MR. BERMAN: Mark this, please.

21 (Plaintiff's Exhibit 21, three-page  
22 document Bates stamped DEF-000010 to 000012,  
23 confidential, marked for Identification, as  
24 of this date.)

25 MR. BERMAN: So, I'll I.D. this one as

1 D. Costa - Confidential

2 a three-page document Bates stamped  
3 Defendant's 000010 to 12.

4 Q. Are you looking at the document?

5 A. Yes.

6 Q. Have you seen it before?

7 A. Yes.

8 Q. Can you tell me what it is?

9 A. It is an e-mail exchange between me  
10 and Jennifer Fischman dated February 26, 2015,  
11 regarding a request from the Pharma Group --  
12 February 25 and 26, from the -- relating to a  
13 request from the Pharma Group for information  
14 about her, including her C.V.

15 Q. Okay. And on the bottom of the page  
16 marked 11, there is a sentence there where it  
17 says, "I will also be serving as corporate  
18 secretary for several boards of directors for the  
19 U.S. subsidiaries."

20 Do you see that text?

21 A. Yes.

22 Q. So, first of all, during your tenure  
23 at MCHA, was it the practice to have the general  
24 counsel serve as the corporate secretary for the  
25 affiliates?

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2 A. That was many things that evolved  
3 through the course of my tenure.

4 Q. So that was consistent with your  
5 experience?

6 MS. GUERON: Objection.

7 MS. COLWIN: Objection.

8 A. This was true as of that date.

9 Q. Okay.

10 A. Many. I don't know if it was most,  
11 but many.

12 Q. And then, do you see up above that,  
13 you responded to Jennifer's e-mail and you stated  
14 in your message, "to get you in the right habits:  
15 We do not have subsidiaries, we have affiliates,  
16 particularly when speaking to anyone other than  
17 MCC."

18 A. Yes.

19 Q. Do you see that text?

20 Was MCC one of MCHA's clients?

21 A. Yes.

22 Q. Was it a significant client?

23 A. Yes.

24 Q. Was it the most significant client at  
25 the time?



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2 A. I don't remember what percentage it  
3 was.

4 Q. So is it fair to say that this e-mail  
5 was informing Jennifer that there was different  
6 terminology that should be used with respect to  
7 the subsidiaries?

8 A. And -- and informing her, in  
9 particular, that using the term subsidiary did not  
10 apply to Pharma. It was not explicit, but this  
11 was in the context of a request from Pharma, which  
12 was not a subsidiary. It was an affiliate. It  
13 was a publicly traded company.

14 Q. Okay. And in response to your  
15 communication, she responded at the top of the  
16 first page, correct?

17 A. Yes.

18 Q. Did you view that as a professional  
19 response?

20 A. Yes.

21 MR. BERMAN: Okay. 22.

22 (Plaintiff's Exhibit 22, a four-page  
23 document, Bates stamped DEF-000162 to  
24 000165, confidential, marked for  
25 Identification, as of this date.)

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2 MR. BERMAN: For identification,  
3 Plaintiff's 22 is a three-page document --  
4 excuse me -- a four-page document Bates  
5 stamped DEF-000162 to 165.

6 THE WITNESS: Yes.

7 Q. Have you seen this document before?

8 A. Yes.

9 Q. Can you tell me what it is?

10 A. This is an e-mail exchange between me  
11 and Jennifer Fischman, July 26 and 27, containing  
12 some feedback about the Genesis project.

13 Q. Is it fair to say that your feedback  
14 included some constructive criticism?

15 A. I believe so, yes.

16 Q. Did Jennifer respond to your critique?

17 A. Yes.

18 Q. Is her response reflected on the first  
19 page of the document?

20 A. Yes.

21 MR. FORTINSKY: Objection.

22 Q. Did Ms. Fischman thank you for the  
23 feedback?

24 A. Yes.

25 Q. And, in your view, is this a

1 D. Costa - Confidential

2 professional response?

3 A. Yes.

4 MR. BERMAN: Next up?

5 (Plaintiff's Exhibit 23, two-page  
6 document Bates stamped DEF-000458 to 000459,  
7 confidential, marked for Identification, as  
8 of this date.)

9 MR. BERMAN: For identification,  
10 Plaintiff's 23 is a two-page document Bates  
11 stamped DEF-000458 to 459.

12 Q. Are you looking at the document?

13 A. I've looked at it.

14 Q. Have you seen it before?

15 A. Yes, I have.

16 Q. Can you tell me what it is?

17 A. It is a communication from Mike  
18 Gragtmans to me dated November 15, 2015, in  
19 response to an e-mail I sent November 11, 2015 to  
20 Mike, Dennis Trice, Bill Radlein and Glen Steady.

21 Q. In that communication you sent on  
22 November 11, what was the purpose of that  
23 communication?

24 A. I communicated to many stakeholders of  
25 the change of -- the changeover from Jennifer to

1 D. Costa - Confidential

2 Nick, and this is the communication I sent to four  
3 clients.

4 Q. And then you see on the top of the  
5 first page, Mr. Gragtmans' response to you?

6 A. Yes.

7 Q. Do you see the last sentence of the  
8 paragraph there, or second to last sentence, "I  
9 fear she may have been blamed for more issues than  
10 is fair. I just want to make sure the record is  
11 set straight in how she conducted herself with my  
12 business affairs. Let me know when we can  
13 talk.....I am available Monday to Wednesday before  
14 Thanksgiving."

15 Do you see that text?

16 A. Yes.

17 Q. Did you ever have a conversation with  
18 Mr. Gragtmans about the subject matter of his  
19 e-mail?

20 A. Yes, I did.

21 Q. What did you say and what did he say  
22 during that conversation?

23 A. He basically repeated his statement  
24 that he has in this e-mail, that he wanted to make  
25 sure that problems that may have occurred or

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2 complaints that may have been lodged by his  
3 business unit were not the primary reason for the  
4 employment action taken, and she had a -- he had a  
5 fear that she may be blamed for more than was  
6 fair.

7 Q. So, I want to make sure I under -- I  
8 don't want to mischaracterize what you're saying,  
9 so correct me if I got this wrong.

10 Did he convey to you, in sum or  
11 substance, that when he got your e-mail, he was  
12 concerned that something related to his business  
13 caused you to make the decision to have Mr. Oliva  
14 join MCHA as general counsel?

15 A. He communicated that he was aware  
16 that, over the years, there had been complaints  
17 about Jennifer relating to his business, and he  
18 wanted to make sure that that was not why she --  
19 the decision was made.

20 Q. Okay. So did he set the record  
21 straight?

22 A. Well, what I told him was that there  
23 were many reasons, and that he didn't need to  
24 worry that anything he had said in the past was  
25 being held against her.

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2 MR. BERMAN: Okay. 24.

3 (Plaintiff's Exhibit 24, a two-page  
4 document Bates stamped DEF-000168 to 000169,  
5 confidential, marked for Identification, as  
6 of this date.)

7 MR. BERMAN: For identification,  
8 Plaintiff's 24 is a two-page document Bates  
9 stamped DEF-000168 to 169.

10 Q. Are you looking at the document?

11 A. Yes.

12 Q. Have you seen it before?

13 A. I don't recall this document.

14 Q. Okay. Can you tell me what this is?

15 A. It is a communication between me and  
16 Jennifer Fischman dated August 15, 2015 regarding  
17 two words or one line in the engagement letter  
18 with Rothschild.

19 Q. Who is Rothschild?

20 A. Rothschild was the financial advisor  
21 retained for Project Genesis.

22 Q. So is this taking place during your  
23 tenure as general counsel?

24 A. This is taken -- taking place --  
25 sorry. I'm starting to slur.

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2 This is when I was president and  
3 Jennifer was acting general counsel.

4 Q. Okay. So is Jennifer asking you a  
5 question about legal agreements?

6 A. She is asking me about the engagement  
7 letter with Rothschild.

8 Q. Is that a contract?

9 A. That's my understanding, is that  
10 that's what she's doing. That's what I believe  
11 this is.

12 Q. And you responded to her and you gave  
13 her the information she was seeking, correct?

14 A. Correct.

15 MR. BERMAN: Mark this, please.

16 (Plaintiff's Exhibit 25, a one-page  
17 document Bates stamp DEF-209, confidential,  
18 marked for Identification, as of this date.)

19 THE WITNESS: To clarify. Can you  
20 read back what my response was to our  
21 exchange about this document. I want to  
22 make sure I spoke accurately, because I kind  
23 of went into a blur there for a moment.

24 (Whereupon, the requested answer was  
25 read back by the reporter.)

1 D. Costa - Confidential

2 THE WITNESS: I believe I gave her the  
3 information she was seeking.

4 MR. BERMAN: 25 is a one-page document  
5 Bates stamped Defendant's 209.

6 Q. You're looking at the document?

7 A. I've read it.

8 Q. Have you seen it before?

9 A. I don't recall.

10 Q. Can you tell me what this is?

11 A. This is an e-mail from Jennifer to me  
12 dated August 18, 2018, where she is telling me  
13 that the schedule that we had discussed for her  
14 visit to Japan would be impacted by a board  
15 meeting.

16 MS. GUERON: I'm sorry. Just to  
17 correct the record, you said 2018. It's  
18 2015.

19 THE WITNESS: Okay. August 18, 2015.

20 Thank you.

21 A. -- about a board meeting that was  
22 going to impact her travel plans.

23 Q. And she sought a recommendation from  
24 you?

25 A. Yes.



1 D. Costa - Confidential

2 Q. Do you know if you responded to it?

3 A. I know I did.

4 Q. But it could have been verbal?

5 A. It could have been verbal.

6 Q. Okay.

7 A. I remember the discussion. It was  
8 verbal.

9 (Plaintiff's Exhibit 26, a one-page  
10 document Bates stamped DEF-000273,  
11 confidential, marked for Identification, as  
12 of this date.)

13 MR. BERMAN: For identification,  
14 Plaintiff's 26 is a one-page document Bates  
15 stamped DEF-000273.

16 Q. Are you looking at the document?

17 A. I've read it.

18 Q. Have you seen it before?

19 A. Yes.

20 Q. Can you tell me what it is?

21 A. It's e-mail from me to Jennifer dated  
22 September 1, 2015.

23 Q. Have you completed your response?

24 A. I propose that we have a sit-down.

25 Q. Okay. Why did you send Ms. Fischman

1 D. Costa - Confidential

2 this e-mail?

3 A. I don't specifically recall.

4 Q. Do you see the second full sentence,  
5 "I am at a loss as to how to work with you and  
6 communicate with you"?

7 A. Yes.

8 Q. Does that refresh your recollection as  
9 to why you sent this e-mail?

10 A. I don't recall what specifically  
11 prompted me to communicate my frustration.

12 Q. Do you see the first sentence about  
13 constant change of direction in recent e-mails?

14 A. Yes.

15 Q. Do you know what that relates to?

16 A. I don't.

17 MR. BERMAN: Okay.

18 (Plaintiff's Exhibit 27, a three-page  
19 document Bates stamped DEF-000334 to 000336,  
20 confidential, marked for Identification, as  
21 of this date.)

22 MR. BERMAN: For identification,  
23 Plaintiff's 27 is a three-page document  
24 Bates stamped DEF-000334 to 36.

25 Q. Are you looking at the document?

1 D. Costa - Confidential

2 A. Yes, I have read it.

3 Q. Have you seen it before?

4 A. I don't recall.

5 Q. Can you tell me what this is?

6 A. This is a thread that includes  
7 communication among me, Jennifer and Jordan dated  
8 September 18, 2015, and then is followed by  
9 communication from Jennifer directly to me.

10 Q. Do you see at the top where it says,  
11 "Jennifer, there's no" --

12 A. I'm sorry. Dated September 18, 2015.

13 Q. Okay. I don't object to you reading  
14 dates into the record if you wish, but the  
15 document does have dates on it, correct?

16 A. Yes. But it also has who it's to and  
17 who it's from, and you're asking me to describe  
18 the document. I'm just trying to be accurate.

19 Q. That's fine.

20 Do you see at the top where it says,  
21 "Jennifer, there is no need for me to weigh in"?

22 A. Yes.

23 Q. Do you know why you said that to her?

24 A. I think I was saying that she could go  
25 ahead and make the call.

1 D. Costa - Confidential

2 Q. Okay.

3 A. On the question that had been raised  
4 by Jordan.

5 Q. Okay. So, these communications that  
6 I've just shown you in these last few exhibits,  
7 24, 25, 26 and 27, they're all around -- they  
8 begin August 5 -- well, just respectively, they're  
9 August 5, August 18, September 1 and September 18.

10 Are you with me so far?

11 A. Yes.

12 Q. So then, two months later, you have a  
13 review with Ms. Fischman, correct, and you deliver  
14 the November 2015 performance review for her,  
15 correct?

16 A. Correct.

17 Q. So, do you recall, and you can  
18 reference it if you wish, that one of your  
19 critiques of Ms. Fischman was that she didn't  
20 proactively seek you out to communicate?

21 A. Yes.

22 Q. So, we've just seen here several  
23 examples of her reaching out to you. So, what's  
24 the basis for including in the review that she  
25 wasn't reaching out to you proactively?

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2 A. Okay. So, first, I want to clarify  
3 Plaintiff's 27. There was an issue that was  
4 brought to my attention by Jordan, not by  
5 Jennifer.

6 Q. Okay.

7 A. Plaintiff's 26, I don't remember what  
8 specifically preceded this, but I'm -- this does  
9 not evidence that she brought issues to my  
10 attention. Plaintiff's 25, she's talking about  
11 scheduling her trip to Japan. Not a substantive  
12 matter. Plaintiff's 24, she was asking me about  
13 an interpretation of a few words in an engagement  
14 letter. I -- you know, this was not of huge  
15 import. I think those are the ones that you're  
16 referring to.

17 Q. Okay. So, these communications that  
18 we've just looked at, did you view them as a  
19 nuisance?

20 A. No. Not at all.

21 Q. At that time, did you have any concern  
22 about any of the reports over-communicating to  
23 you?

24 A. I don't recall ever being concerned  
25 about my direct reports over-reporting to me.

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2 Q. During your tenure as general counsel,  
3 did you ever have any concerns about  
4 over-reporting to those who were supervising your  
5 work?

6 A. I did not. As Jennifer testified, and  
7 alleged, I communicated with my boss,  
8 Mr. Yoshisato, on a regular basis, very  
9 frequently. I kept him apprised of what I was  
10 working on. I understood that to be my job and  
11 responsibility as general counsel, to keep the  
12 president aware of all things that I considered  
13 material to the company and its clients.

14 Q. So, when you say keeping the president  
15 informed of all things, the caveat is that that's  
16 with respect to critical pieces of information,  
17 correct?

18 A. That I considered material. It is a  
19 matter of judgment as to what's material to the  
20 company's interest and its clients' interests.

21 Q. Okay. But you wouldn't communicate to  
22 clients every detail of every matter you're  
23 working on, right?

24 A. Well, right now, I'm talking about my  
25 communications with Mr. Yoshisato, not my clients.

1 D. Costa - Confidential

2 Q. Would the answer change with respect  
3 to clients?

4 A. It's a completely different  
5 relationship in your question. I'm not sure I  
6 understand.

7 Q. In your representation of clients in  
8 your role as general counsel at MCHA, would you  
9 communicate every detail of every matter to them  
10 or would you --

11 MS. GUERON: Objection.

12 Q. -- do it some other way?

13 MS. GUERON: Objection.

14 A. It was a case-by-case judgment call on  
15 my part to determine what would be material to a  
16 given client in a given circumstance, and I did my  
17 best to communicate what I believed to be material  
18 to their interests.

19 Q. Okay. So I think you're agreeing with  
20 me when you're saying you would communicate  
21 everything that you deemed to be material,  
22 correct?

23 A. Yes.

24 Q. And you wouldn't over-communicate by  
25 sharing with clients information that was

1 D. Costa - Confidential

2 immaterial, correct?

3 MS. GUERON: Objection.

4 A. Um, I can't say I never communicated  
5 information that was not material.

6 Q. Okay. I didn't ask it in the form of  
7 an absolute question.

8 Do you recall, with respect to project  
9 Genesis, MCHA performing a due diligence role?

10 A. Yes.

11 Q. Do you recall being asked by Ciro  
12 Ahumada whether you would be communicating with  
13 MCHJ in connection with the matter?

14 A. I don't specifically recall that, no.

15 MR. BERMAN: I'm going to show you  
16 Exhibit 28.

17 (Plaintiff's Exhibit 28, two-page  
18 document Bates stamped DEF 000910 and 00091,  
19 confidential, marked for Identification, as  
20 of this date.)

21 THE WITNESS: Yes.

22 Q. Does that refresh your recollection  
23 concerning communication of critical information  
24 to clients?

25 A. This is a very specific situation,



1 D. Costa - Confidential

2 and, as I said, every situation, I looked at on a  
3 case-by-case basis.

4 Q. Okay.

5 A. I don't know if you're asking me a  
6 question.

7 MR. BERMAN: All right. That's number  
8 28. So, we'll do 29.

9 (Plaintiff's Exhibit 29, one-page  
10 document Bates stamped DEF-000194,  
11 confidential, marked for Identification, as  
12 of this date.)

13 MR. BERMAN: For identification, this  
14 is DEF-000194. It's a one-page document.

15 THE WITNESS: Yes.

16 Q. Have you seen this document before?

17 A. Yes.

18 Q. Can you tell me what it is?

19 A. It's an e-mail from Kelli Troccoli to  
20 me dated August 12, 2015.

21 Q. Do you see the first line there where  
22 it says, here is the information you requested?

23 A. Yes.

24 Q. Did you request information from Kelli  
25 Troccoli?

1 D. Costa - Confidential

2 A. I asked Kelli to put in writing a  
3 series of complaints she had made to me verbally.

4 Q. Why did you ask her to do that?

5 A. I don't specifically recall.

6 Q. Was this after you expressed an  
7 interest in terminating Ms. Fischman?

8 A. I don't remember the exact date of  
9 that, but this was certainly after I decided that  
10 I thought she should be terminated.

11 Q. Was your request for information from  
12 Mr. Troccoli motivated by a desire to terminate  
13 Ms. Fischman?

14 MS. GUERON: Objection.

15 A. No.

16 MR. BERMAN: Mark this, please.

17 (Plaintiff's Exhibit 30, a four-page  
18 document Bates stamped DEF-000001 through  
19 000004, confidential, marked for  
20 Identification, as of this date.)

21 MR. BERMAN: For identification, this  
22 is a four-page document Bates stamped  
23 DEF-000001 through 000004.

24 THE WITNESS: Yes.

25 Q. Are you looking at the document?

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2 A. Yes.

3 Q. Have you seen it before?

4 A. Yes.

5 Q. Can you tell me what this is?

6 A. This is a thread that includes a  
7 series of communications, one between me and Pat  
8 Saunders, one between me and Ken Fujiwara. The  
9 rest is between me and Ken Fujiwara.

10 Q. On the first page, do you see where it  
11 says, "Pat, I got the okay to speak with Jennifer  
12 with full disclosure"?

13 A. Yes.

14 Q. What does full disclosure refer to?

15 A. That meant I could tell her that she  
16 was being offered the position of acting general  
17 counsel.

18 Q. And when it says, "I got the okay to  
19 speak with Jennifer," who did you get the okay  
20 from?

21 A. Mr. Yoshisato.

22 Q. Then on the second page, in the second  
23 paragraph, it says here, "Yoshisato-san said that  
24 I can notify other legal department members on  
25 February 2, two days before the February 4 board

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2 meeting."

3 Is Yoshisato-san Mr. Yoshisato?

4 A. Yes.

5 Q. And it says here, "this will allow us  
6 to begin interviewing attorney candidates on  
7 February 5," correct?

8 A. Yes.

9 Q. Did you, in fact, interview attorney  
10 candidates on February 5?

11 A. This was for the position that Stephen  
12 Rose eventually filled. I don't remember when we  
13 started that search.

14 Q. Okay. Did you testify earlier  
15 concerning how you filled that position?

16 A. Jennifer ran that process. I was  
17 involved, but I don't recall who she used in terms  
18 of a recruiter or any other details.

19 Q. On the final page here, in the very  
20 center of the communication between you and Ken,  
21 do you see this --

22 A. Yes.

23 Q. -- bottom communication?

24 This is a communication between you  
25 and Mr. Fujiwara, correct?

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2 A. Yes.

3 Q. And after Mr. Fujiwara's name, it says  
4 MCC in the e-mail header.

5 Do you see that?

6 A. Yes.

7 Q. Is that information provided from the  
8 Japan end of this transaction?

9 A. That is a legacy system.

10 Q. So it may not be accurate?

11 A. It has nothing to do with where  
12 someone works. It means they're a part of that  
13 system.

14 Q. Okay. Thank you.

15 Do we get to continue?

16 A. Let me just make sure I turned it off,  
17 and I didn't snooze it, so we don't have to hear  
18 it again. Yeah, we're good.

19 Q. Did you have a conversation with  
20 Mr. Yoshisato concerning making Jennifer acting  
21 general counsel for 12 months?

22 A. Yes.

23 Q. Is there a document that would  
24 memorialize that?

25 A. I'm not sure what you're asking.

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2 Q. Is there some communication from  
3 Mr. Yoshisato concerning a 12-month period for  
4 considering Jennifer acting general counsel?

5 A. You know, as I sit here, I don't  
6 recall any document other than this one that  
7 refers to it. It is what I told Jennifer. It is  
8 what I told everyone. It was -- it was the plan.

9 Q. Okay. But you're not aware of any  
10 contemporaneous memorialization of that plan,  
11 correct?

12 MS. GUERON: Objection.

13 A. Well, this is contemporaneous.  
14 Because this is, you know, before I spoke to  
15 Jennifer. But, other than this, I don't recall.

16 Q. Okay. Did Mr. Yoshisato work in your  
17 offices?

18 A. He was the president of MCHA.

19 Q. Was he located physically on the same  
20 premises where you worked?

21 A. Yes.

22 Q. And was he down the hall from you?

23 A. He was in the office that I then took  
24 when Jennifer took my old office.

25 Q. So, you worked proximate to each

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2 other?

3 A. Yes, very proximate.

4 MR. BERMAN: Okay. 31.

5 (Plaintiff's Exhibit 31, multipage  
6 document Bates stamped DEF-000693 to 000695,  
7 confidential, marked for Identification, as  
8 of this date.)

9 MR. BERMAN: It's a multipage document  
10 Bates stamped DEF-000693 to 000695.

11 Q. Are you looking at the document?

12 A. Yes.

13 Q. Have you seen it before?

14 A. Yes.

15 Q. Can you tell me what it is?

16 A. This is a response I got to Pat on  
17 August 9 when I requested her advice on August 7  
18 about an e-mail I wanted to send to Ken Fujiwara.

19 Q. Why did you ask Pat Saunders to review  
20 your e-mail to Ken Fujiwara?

21 A. I asked for Pat's input on many, many  
22 things, and asked for her input on almost  
23 everything concerning Jennifer, because I wanted  
24 to make sure I had input.

25 Q. Okay. And why were you communicating

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2 with Ken on this topic? Mr. Fujiwara. Excuse me.

3 A. Yes. So, he -- he was very interested  
4 in who sat in the office of general counsel of  
5 MCHA, and I wanted him to know what the status  
6 was.

7 And also, I think it's reflected in  
8 another communication; I had been giving him  
9 positive reports about Jennifer up until this  
10 point, some cursory positive optimistic reports,  
11 and I wanted to tell him where I was at.

12 Q. So this is August 9, 2015, right?

13 A. Correct.

14 Q. So up until this point,  
15 Mr. Fujiwara --

16 A. Oh, August 7 -- oh, well, the draft  
17 was August 7.

18 Q. Okay. But it hadn't been sent yet on  
19 August 9, correct?

20 A. Yes. Correct.

21 Q. So, up until that point, as far as  
22 Mr. Fujiwara is aware, he's only heard positive  
23 things about Jennifer's performance?

24 A. Yeah. We didn't discuss her much.  
25 There wasn't much discussed, but what we discussed



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2 was positive.

3 Q. Do you see in the middle of the first  
4 full paragraph there, there's a line that  
5 commences, "nevertheless, after discussions  
6 regarding the cost of hiring a general counsel,  
7 MCHC directed MCHA to promote Jennifer, and I was  
8 asked to do my best to make it work"?

9 A. So, I'm sorry, I don't see what  
10 you're --

11 Q. Let's count down, 1, 2, 3, 4, 5 lines  
12 at the very end on the right, "nevertheless"?

13 A. Yes.

14 Q. And it continues from there? Okay.

15 Did you have discussions regarding the  
16 cost of hiring a general counsel?

17 A. Yes. As I referred to earlier.

18 Q. Who were those conversations with?

19 A. Primarily, with Mr. Yoshisato, but I  
20 had at least one conversation with Ken Fujiwara.

21 Q. Was Ken Fujiwara at MCHC?

22 A. He was at some entity in Japan.

23 Q. So when it says here, "MCHC directed  
24 MCHA to promote Jennifer," is that a reference to  
25 Mr. Fujiwara?

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2 A. Yes, it is.

3 Q. Then at the very last paragraph of  
4 that draft communication, the first line of that  
5 last paragraph says, "how would you like me to  
6 proceed?"

7 Do you see that?

8 A. Yes.

9 Q. Why are you asking Mr. Fujiwara how he  
10 wants you to proceed with handling Jennifer?

11 A. As I said, this was an issue of great  
12 importance to him personally, and I knew he cared  
13 about who sat in that role, and I also routinely  
14 sought his advice on things.

15 MR. BERMAN: Okay. Let's mark this as  
16 the next one.

17 (Plaintiff's Exhibit 32, a one-page  
18 document Bates stamped DEF-000696,  
19 confidential, marked for Identification, as  
20 of this date.)

21 MR. BERMAN: For identification, this  
22 is a one-page document Bates stamped  
23 DEF-000696.

24 Q. Are you looking at the document?

25 A. Yes.

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2 Q. Have you seen it before?

3 A. Yes.

4 Q. Can you tell me what it is?

5 A. This is an e-mail that I sent to Ken  
6 Fujiwara on August 16, 2015.

7 Q. So, does looking at this document  
8 refresh your recollection as to when you first  
9 desired to terminate Ms. Fischman?

10 MS. GUERON: Objection.

11 A. No, this does not relate to when I  
12 first desired to. This is the e-mail I ultimately  
13 elected to send to Ken Fujiwara instead of the  
14 draft of August 7 that we looked at in Plaintiff's  
15 31.

16 Q. Okay. So as of August 7, did you  
17 desire to terminate Ms. Fischman?

18 A. Yes.

19 Q. Was there some point prior to August 7  
20 when you desired to terminate Ms. Fischman?

21 A. I -- I don't remember when I first  
22 did.

23 Q. Was that August 7 e-mail the first  
24 time that you wanted to terminate Ms. Fischman?

25 MS. GUERON: Objection.

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2 A. It's the first time I put in writing  
3 that I wanted to terminate her.

4 Q. Do you know at that time approximately  
5 how long you had been considering terminating  
6 Ms. Fischman?

7 A. I don't recall.

8 MR. BERMAN: Okay. You can set that  
9 aside.

10 Mark the next one, please.

11 (Plaintiff's Exhibit 33, a four-page  
12 document Bates stamped DEF-000219 to 000222,  
13 confidential, marked for Identification, as  
14 of this date.)

15 MR. BERMAN: For identification,  
16 Plaintiff's 33 is a four-page document Bates  
17 stamped DEF-000219 to 222.

18 Q. Are you looking at the document?

19 A. Yes, I have looked at it.

20 Q. Have you seen it before?

21 A. Yes.

22 Q. Can you tell me what it is?

23 A. It is an e-mail exchange between me --

24 Q. Continue, please. I'm sorry.

25 A. No problem.

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2 -- between me and Ken Fujiwara dated  
3 August 18th and 19th.

4 Q. Do you see the reference there to  
5 Sakaguchi-san?

6 A. Yes.

7 Q. Who is Mr. Sakaguchi?

8 A. This is the person who we discussed  
9 earlier, Masanori Sakaguchi.

10 Q. Do you know why he's referenced as a  
11 participant in the call?

12 A. Ken chose to include him.

13 Q. Now, you had mentioned previously, in  
14 discussing Mr. Fujiwara, that prior to the time  
15 when you had prepared that draft e-mail on August  
16 7, he was only aware of positive reports  
17 concerning Ms. Fischman, correct?

18 A. As far as I can recall.

19 Q. Do you know whether those positive  
20 reports were reduced to writing?

21 A. I do not believe they were.

22 Q. At the time when Ms. Fischman was  
23 promoted to acting general counsel, did  
24 Mr. Fujiwara express any interest in having her  
25 visit Japan?

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2 A. I don't recall.

3 Q. Okay. Is that something that would  
4 have stood out to you?

5 A. Um, no.

6 MS. COLWIN: Objection.

7 A. I had discussions with Jennifer about  
8 when she should visit Japan. I do not -- I gave  
9 her my opinions. I do not specifically recall any  
10 discussion with Ken on that topic.

11 Q. And she actually did travel to Japan,  
12 correct?

13 A. In October, correct.

14 Q. Okay. We agree.

15 MR. BERMAN: 34.

16 (Plaintiff's Exhibit 34, one-page  
17 document Bates stamped DEF-001024,  
18 confidential, marked for Identification, as  
19 of this date.

20 MR. BERMAN: For identification, this  
21 is a one-page document Bates stamped  
22 DEF-001024.

23 THE WITNESS: Yes.

24 Q. Are you looking at the document?

25 A. Yes.

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2 Q. Have you seen it before?

3 A. Yes.

4 Q. Can you tell me what it is?

5 A. This is an e-mail from me to Ken  
6 Fujiwara.

7 Q. Why did you send this communication to  
8 Mr. Fujiwara?

9 A. There was a communication of some sort  
10 before this where he proposed that we speak in  
11 November, and I said I thought that was too long  
12 to wait.

13 Q. Why was that too long to wait?

14 A. Because I had made my decision, and my  
15 frustration was running high.

16 MR. BERMAN: Let's set that aside.

17 (Plaintiff's Exhibit 35, a one-page  
18 document, Bates stamped DEF 025,  
19 confidential, marked for Identification, as  
20 of this date.)

21 Q. No, I think this -- I'm sorry. I  
22 apologize. I think this is a continuation of the  
23 last exhibit, that I placed out as two exhibits.

24 Just to put it into context for you,  
25 Ms. Costa, this looks like it's the second page of

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2 the e-mail thread we just looked at. Does that  
3 change any of your answers?

4 A. No.

5 MS. GUERON: I just want to say, these  
6 are all part of 33, also.

7 MR. BERMAN: Well, if they're  
8 incorporated into multiple exhibits, that  
9 may be. I'm just asking about specific  
10 parts, and I want to make sure the witness  
11 has the full information.

12 MS. GUERON: Right. But 33 is the  
13 full thread, is all I'm saying.

14 MR. BERMAN: Okay. That's fine.

15 Q. I'm looking at the page marked  
16 DEF-001025.

17 Are you looking at that?

18 A. Yes.

19 Q. Have you seen it before?

20 A. Yes.

21 Q. Can you tell me what that is?

22 A. Yes. I do recall reading this in an  
23 earlier exhibit.

24 This is part of an e-mail thread  
25 between me and Ken Fujiwara.



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2 Q. He says in this message, "I'm a bit  
3 surprised to hear that you would be thinking a  
4 termination," right?

5 A. Yes.

6 Q. So had he received your August 7 draft  
7 letter at this time?

8 A. No. As I stated, the e-mail I  
9 ultimately sent him was that August 16th e-mail  
10 that we just reviewed.

11 Q. Okay. So, that draft e-mail that Pat  
12 reviewed never actually got transmitted?

13 A. Not at that time.

14 Q. Did it ultimately get transmitted into  
15 some form?

16 A. I don't recall.

17 Q. Do you see the line at the bottom of  
18 that paragraph where he says, "I know there is  
19 some claim or allegation to her, but it is too  
20 sudden for me to agree or disagree, because not a  
21 small number of people in Japan like her and have  
22 been appreciative for her contribution."

23 Do you see that?

24 A. Yes.

25 Q. Do you know what the remark about some

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2 claim or allegations relates to?

3 A. I think it -- I believe it refers  
4 generally to the complaints various people have  
5 made about her.

6 Q. Well, was there one particular  
7 complaint made by Mr. Kohei?

8 MS. GUERON: Objection.

9 A. No, that's not what this is referring  
10 to.

11 Q. Was Mr. Fujiwara aware on or about  
12 August 19, 2015 about a compliance complaint made  
13 by Mr. Kohei concerning Ms. Fischman?

14 MS. GUERON: Objection, foundation.

15 A. I don't recall the timing of that. I  
16 would have to look at a document to remind me of  
17 the timing.

18 Q. Okay. Because you seem certain that  
19 this reference to a claim or allegation is related  
20 to something else; is that right?

21 MS. GUERON: Objection.

22 A. My memory is that this was intended to  
23 be general, not specific to a given claim.

24 Q. Do you know what claims or allegations  
25 would be included in this then?

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2 MS. GUERON: Objection.

3 A. I've already answered that question.

4 Q. So are we talking about --

5 MR. BERMAN: Withdrawn.

6 Q. Were you surprised to learn that  
7 Mr. Fujiwara's view was that there was not a small  
8 number of people in Japan who liked Ms. Fischman?

9 A. That didn't surprise me.

10 Q. Were you surprised to learn that his  
11 view was that there were not a small number of  
12 people in Japan that had been appreciative of her  
13 contribution?

14 A. That didn't surprise me.

15 Q. See at the bottom where it says,  
16 "thus, I will not think of termination until you  
17 and us had a chance to talk this matter in  
18 November"?

19 A. Yes.

20 Q. Did you ultimately have a conversation  
21 with Mr. Fujiwara concerning the termination of  
22 Ms. Fischman?

23 A. Yes. But it did not wait until  
24 November.

25 Q. Okay. Did it take place in September?

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2 A. My memory is that this was before the  
3 Kelli allegation, and the Kelli allegation  
4 accelerated our decision to have a discussion, but  
5 I would need to look at a document to confirm  
6 whether my memory is accurate or not.

7 Q. Okay. If that changes as we look  
8 through the remainder of the exhibits, please let  
9 me know.

10 MR. BERMAN: And we're on 36.

11 (Plaintiff's Exhibit 36, a two-page  
12 document Bates stamped DEF-000848 to 000849,  
13 confidential, marked for Identification, as  
14 of this date.)

15 MR. BERMAN: For identification, this  
16 is a two-page document Bates stamped  
17 DEF-000848 to 849.

18 THE WITNESS: This confirms what I  
19 told you was my memory of the order in which  
20 things occurred.

21 MR. BERMAN: Okay.

22 THE WITNESS: So, this was clearly not  
23 referring in any way to the Kelli Troccoli  
24 claim.

25 Q. So, just to be clear, have you seen

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2 this document before?

3 A. Yes.

4 Q. And this is a communication between  
5 you and Mr. Fujiwara, correct?

6 A. Yes. And Mr. Sakaguchi is copied as  
7 well.

8 Q. Why is Mr. Sakaguchi copied on this  
9 message?

10 A. I do not recall whether Mr. Fujiwara  
11 brought him into this matter or if he's here for  
12 another reason.

13 Q. Okay. And at this point in time,  
14 Mr. Sakaguchi is an attorney, and he's no longer  
15 working for Rayon, correct?

16 A. Correct. He is running the legal  
17 department in Tokyo and, therefore, had an  
18 interest in legal department matters.

19 Q. When you refer to legal department, is  
20 that a reference to MCHJ?

21 A. I think it was MCHJ. Again, I can't  
22 speak to which legal entity it was.

23 Q. Okay. But it was one of the  
24 Mitsubishi affiliated entities?

25 A. Yes.

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2 MR. BERMAN: This should be 37.

3 (Plaintiff's Exhibit 37, a four-page  
4 document Bates stamped DEF-000953 to 000956,  
5 confidential, marked for Identification, as  
6 of this date.)

7 MR. BERMAN: For identification,  
8 Exhibit 37 is Bates stamped DEF-000953 to  
9 956.

10 THE WITNESS: Yes.

11 Q. Have you seen this document before?

12 A. Yes.

13 Q. Can you tell me what it is?

14 A. This is communication between me and  
15 Pat Saunders.

16 Q. See at the bottom of the first page  
17 where it says, "this is my battle. I will remove  
18 you from future e-mail with MCHJ"?

19 A. Yes.

20 Q. Why did you plan, or why did you  
21 mention that you were going to remove Ms. Saunders  
22 from e-mail with MCHJ?

23 A. Because Jennifer had claimed she had a  
24 conflict of interest and couldn't conduct the  
25 investigation.

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2 Q. Any other reason?

3 A. It's possible that Pat was busy and  
4 overwhelmed at the time. But, honestly, I don't  
5 remember.

6 Q. If you could direct your attention to  
7 the second page there, DEF-954.

8 Do you see in the center there's a  
9 communication that says, "Dear Sakaguchi-san,  
10 contrary to my personal and professional judgment,  
11 I will proceed as you request"?

12 A. Yes.

13 Q. When this is referring to a request,  
14 is it your understanding that that's referring to  
15 the message below that?

16 A. It was the request that we not hire  
17 outside counsel at that point in time.

18 Q. Why is it that you're adhering to the  
19 request from Mr. Sakaguchi, rather than following  
20 your personal and professional judgment?

21 A. In part, because, as I stated, I  
22 arguably also had a conflict, and I was also a  
23 witness, and Jennifer was very sensitive to the  
24 fact that this couldn't be conducted internally,  
25 so it was hard to ignore outside input.

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2 Q. Did you ever ultimately retain outside  
3 counsel for this?

4 A. I don't believe so.

5 MR. BERMAN: Okay. 38.

6 (Plaintiff's Exhibit 38, a three-page  
7 document Bates stamped DEF-000702 through  
8 000704, confidential, marked for  
9 Identification, as of this date.)

10 MR. BERMAN: For identification  
11 purposes, Plaintiff's 38 is a three-page  
12 document Bates stamped DEF-000702 through  
13 704.

14 THE WITNESS: Yes.

15 Q. Have you seen this document before?

16 A. Yes. Including a minute ago, as part  
17 of the earlier exhibit.

18 Q. Okay. If you turn your attention to  
19 the bottom of the first page there, do you see a  
20 reference to Kosakai-san?

21 A. Kosakai.

22 Q. Kosakai-san and/or Date-san?

23 Did you identify previously an  
24 individual named Kosakai?

25 A. I mentioned Kosakai and Date both



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2 earlier.

3 Q. So, these are those same individuals?

4 A. That was the CFO and the number 2.

5 Q. Okay. Why is it that you were  
6 considering whether the issue described in this  
7 communication should be raised with Kosakai and/or  
8 Date?

9 A. Date-san was on the board of MCHA at  
10 that time. I don't think I was thinking I needed  
11 to raise it with Kosakai-san, but I was meeting  
12 with the two of them, and Date-san was on the  
13 board.

14 Q. Okay. And Kosakai -- I'm not going to  
15 pronounce his name properly, I'm sorry. It's hard  
16 for me.

17 A. That's good.

18 Q. Was that a finance person?

19 A. Yes, he was a finance person.

20 Q. So, why would this decision be  
21 pertinent to a finance person in Japan?

22 MS. GUERON: Objection.

23 A. As I said, Date-san was on the board  
24 of MCHA. I don't re -- I'm surprised to see that  
25 I mentioned Kosakai-san. I know I met with the

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2 two of them together. That might have been what I  
3 was referring to. I can't think of any reason why  
4 I would have raised it with Kosakai-san.

5 Q. At the time that Date-san was on the  
6 board of MCHA, was he physically located in  
7 America?

8 A. He was physically located in Tokyo.

9 Q. Do you know whether he was performing  
10 a dual role in connection with another Mitsubishi  
11 affiliate?

12 A. He didn't have a dual role. He had a  
13 role in Japan, and he was a member of the Board of  
14 Directors of MCHA.

15 Q. So, his duties and responsibilities in  
16 connection with the board of MCHA were part of his  
17 position in Japan?

18 MR. FORTINSKY: Objection to form.

19 MS. GUERON: Objection.

20 MS. COLWIN: Objection.

21 Q. Did I get that right?

22 A. No, you didn't.

23 Q. Okay. Can you please explain?

24 A. I guess, there is a way in which to  
25 define terms to state that he had a dual role. It

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2 was common for people who sat on the MCHA board --  
3 or it wasn't common. In every instance that I can  
4 recall, members of the MCHA board had a day job.  
5 So, I didn't think of that as a dual role.

6 Q. Okay. So you considered their duties  
7 and responsibilities on the MCHA board to be part  
8 of their day job in Japan?

9 A. No, I said --

10 MR. FORTINSKY: Objection to form.

11 A. -- the opposite.

12 Q. The opposite of that?

13 A. I said, they had a day job and then  
14 they had an appointment which took a small  
15 fraction of their time and attention. I don't  
16 consider it a job, is what I was trying to say.

17 Q. So then, let me see if I have this  
18 correct. At this time that this communication was  
19 transmitted, Mr. Date was an employee of a  
20 Mitsubishi affiliate in Japan?

21 A. Yes.

22 Q. And simultaneous, he also sat on the  
23 Board of Directors of MCHA?

24 A. He represented the shareholder on the  
25 board of MCHA, yes.

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2 Q. When you refer to the shareholder,  
3 there's only one shareholder, correct?

4 A. Correct.

5 Q. And that shareholder was MCHC,  
6 correct?

7 A. Correct.

8 MR. BERMAN: Okay. Thank you for  
9 clarifying that.

10 All right. Exhibit 39.

11 (Plaintiff's Exhibit 39, a four-page  
12 document Bates stamped DEF-000961 through  
13 000964, confidential, marked for  
14 Identification, as of this date.)

15 MR. BERMAN: For identification,  
16 DEF-000961 through 64.

17 Q. Are you looking at the document?

18 A. Yes.

19 Q. Have you seen it before?

20 A. Yes.

21 Q. Can you tell me what it is?

22 A. This is e-mail -- an e-mail thread we  
23 saw previously, with the addition of my  
24 communication to Ken Fujiwara on September 1,  
25 2015.

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2 Q. Does this e-mail, at the top of the  
3 first page, accurately reflect your state of mind  
4 on or about September 1st?

5 MS. GUERON: Objection.

6 A. Yes.

7 Q. Why did you communicate that sentiment  
8 to Mr. Fujiwara?

9 A. Because I was frustrated, and he's a  
10 friend.

11 Q. Now, in reference to the first line  
12 that says, in part, "I am not trusted to run an  
13 internal investigation." What is the internal  
14 investigation referring to?

15 A. It was my -- my opinion that we should  
16 hire outside counsel to investigate Kelli's claim  
17 against Jennifer.

18 Q. Did you have the discretion to decide  
19 anyway to hire an outside counsel?

20 A. I did.

21 Q. You had that discretion?

22 A. Yes, I did.

23 Q. But you declined to exercise it?

24 MS. COLWIN: Objection.

25 A. That's correct.

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2 MR. BERMAN: 40.

3 (Plaintiff's Exhibit 40, a three-page  
4 document Bates stamped DEF-000705 through  
5 000707, confidential, marked for  
6 Identification, as of this date.)

7 MR. BERMAN: This is defendant's  
8 000705 through 707.

9 Q. Did you look at the document?

10 A. I have read it.

11 Q. Have you seen it before?

12 A. Yes.

13 Q. Can you tell me what it is?

14 A. This is an e-mail from me to Ken  
15 Fujiwara.

16 Q. And then, if I direct your attention  
17 to the top of the second page, do you see the  
18 first line where it says, "I'm going to speak to  
19 Nick and see if he's interested"?

20 A. Yes.

21 Q. "It would be great to have Nick back  
22 again"?

23 A. Yes.

24 Q. Did you speak to Nick?

25 A. At some point after this date, yes.

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2 Q. Okay. Do you know when that took  
3 place?

4 A. I don't.

5 Q. Was that the lunch you referred to?

6 A. What I referred to was my birthday  
7 lunch, or dinner, I don't remember. I don't  
8 remember when I next spoke to Nick.

9 Q. Without divulging your year of birth,  
10 what's your birthday?

11 A. August 15.

12 Q. Okay. So that would have transpired  
13 before this communication took place?

14 A. Yes, it did, which is what made me  
15 think that maybe Nick would be available.

16 Q. So, as of the date of this  
17 communication, you'd already had some kind of  
18 conversation with Nick, and in this communication  
19 you reference that you're going to speak with him  
20 again, and at some point, you subsequently did  
21 that?

22 A. At some point, I did.

23 Q. Do you see in the next communication  
24 below that from Fujiwara, where he states in part,  
25 "we may even want to listen to Jennifer's version

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2 of this story"?

3 Do you see that text?

4 A. Yes.

5 Q. Did you ever listen to Jennifer's  
6 version of the story?

7 MS. COLWIN: Objection.

8 A. Absolutely. Jennifer and I had a  
9 number of conversations about the situation with  
10 Kelli.

11 Q. Okay. And did you feel that Jennifer  
12 was acting unreasonably in connection with her  
13 relationship with Kelli?

14 A. With respect to Kelli's potential ADA  
15 claim? Yes.

16 Q. What about with respect to their  
17 personal interactions in the workplace?

18 A. I can't speak to that.

19 MR. BERMAN: Let's do 41.

20 (Plaintiff's Exhibit 41, a three-page  
21 document Bates stamped DEF-000439 through  
22 000441, confidential, marked for  
23 Identification, as of this date.)

24 MR. BERMAN: For identification, this  
25 is a three-page exhibit Bates stamped



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2 DEF-000439 through 441.

3 Q. Are you looking at the document?

4 A. Yes.

5 Q. Have you seen it before?

6 A. Yes.

7 Q. Can you tell me what it is?

8 A. This is communication with -- between  
9 me and Ken Fujiwara.

10 Q. Okay.

11 A. And Mr. Sakaguchi is cc'd.

12 Q. So in the top of the first page, in  
13 the communication from Ken to you, he says to  
14 you -- or the e-mail communication reads, "what  
15 you need to do is to draw a clear picture to  
16 explain the increase of MCHA running cost and  
17 justifiable allocation of that to affiliates or  
18 parents."

19 Did you see that sentence?

20 A. Yes.

21 Q. Do you have an understanding of why  
22 he's telling you that?

23 MS. GUERON: Objection.

24 MS. COLWIN: Objection.

25 A. He was telling me that I was

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2 responsible for the increase in MCHA's budget as a  
3 result of retaining Jennifer and hiring Nick.

4 Q. What is the reference to "justifiable  
5 allocation of that to affiliates or parents"?

6 A. I don't know specifically what he was  
7 referring to.

8 Q. Well, were the costs of MCHA allocated  
9 to affiliates or parents?

10 A. As I told you, 100 percent of the  
11 costs of the legal department were allocated to  
12 its clients. So, that could be described as  
13 affiliates or parents. It's not a term I would  
14 use, but, yes, 100 percent was allocated to  
15 clients.

16 Q. In the next line, you see the  
17 reference of Iguchi-san?

18 A. Yes.

19 Q. Who is that?

20 A. That is Shin Iguchi, who was finance  
21 and accounting at MCHA, and, therefore, needed to  
22 make changes to the budget.

23 MR. BERMAN: Next exhibit. 42.

24 (Plaintiff's Exhibit 42, a five-page  
25 document Bates stamped DEF-000346 through

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2 350, confidential, marked for  
3 Identification, as of this date.)

4 THE WITNESS: Okay.

5 MR. BERMAN: For identification, this  
6 is Bates stamped DEF-000346 through 350.

7 THE WITNESS: Yes.

8 Q. I'll direct your attention to the  
9 paragraph that begins "if Jennifer accepts."

10 Do you see that paragraph?

11 A. Yes.

12 Q. And the last two sentences there, do  
13 you see the reference to a request for additional  
14 money from MCHC?

15 A. "I believe we will not have to request  
16 additional money from MCHC."

17 Q. Why was this being discussed?

18 A. I was assuring Ken that MCHC's legal  
19 services fee wouldn't increase.

20 Q. So did legal services paid by  
21 affiliates increase in proportion with the costs  
22 incurred by MCHA?

23 A. Again, it was covered dollar for  
24 dollar, but it did not always change  
25 proportionally. Things were constantly changing

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2 that had an impact on the allocation. This was  
3 just a sort of, don't worry, MCHC's fee won't  
4 increase.

5 Q. Understood. But without regard to the  
6 allocation, if MCHA's costs increased or expenses  
7 increased, that cost would be allocated to one of  
8 the affiliates, correct?

9 A. It would be an -- allocated among the  
10 affiliates, unless we had a reserve for some  
11 reason.

12 Q. Okay. Thank you.

13 Do you see in the paragraph two  
14 paragraph down, a reference to BHQS, or BHQs?

15 A. Yeah. Why am I not seeing it? I'm  
16 sorry, where are you.

17 Q. It's on the fifth paragraph.  
18 "Regardless of what happens with the legal  
19 department in 2015 and 2016, MCHC/BHQ" --

20 A. Oh, BHQs, yes.

21 Q. What is that?

22 A. Business headquarters.

23 Q. Ah, okay. Okay.

24 So where it says, "they will have to  
25 pay my costs in 2016," what costs are those?

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2 A. I don't recall.

3 Q. Then in the next paragraph, at the  
4 conclusion of which it says, "in the end, MCHC  
5 will have to pay for a new GC and for Jennifer to  
6 say or go regardless."

7 Do you see that line?

8 A. Yes.

9 Q. What do you mean when you say, "MCHC  
10 will have to pay for a new GC"?

11 A. I was referring to the group. It was  
12 not MCHC.

13 Q. Okay. So that cost would be  
14 apportioned amongst the affiliates?

15 A. Yes, certainly. And specifically not  
16 to MCHC.

17 MR. BERMAN: 43.

18 (Plaintiff's Exhibit 43, a seven-page  
19 document Bates stamped DEF-000351 to 000357,  
20 confidential, marked for Identification, as  
21 of this date.)

22 MR. BERMAN: This is will be Bates  
23 stamped DEF-000351 through 357.

24 Q. Have you seen this document before?

25 A. Yes.

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2 Q. Can you tell me what it is?

3 A. It's an e-mail communication from me  
4 to Ken Fujiwara.

5 Q. I direct your attention to the top of  
6 the second page. And in the second full sentence  
7 it says, "as you mentioned, this is my (and  
8 Sakaguchi-san's issue), not Date-san nor  
9 Kosakai-san's, but the management issue including  
10 its budget of MCHA as a subsidiary of MCHC is  
11 under the responsibility of Date-san's department  
12 as you are well aware of."

13 Do you see that sentence?

14 A. Yes.

15 Q. Were you aware of this arrangement  
16 that is specified here by Mr. Fujiwara?

17 A. What arrangement are you referring to?

18 Q. Whatever is referenced in that second  
19 full sentence.

20 A. Honestly, this is not a very  
21 well-worded or drafted e-mail. It's a little bit  
22 confusing. I know what I think he meant, yes.

23 Q. Okay. So was the budget of MCHA a  
24 responsibility of Mr. Date?

25 A. He was the member of the board of MCHA

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2 appointed as a representative of MCHC, the  
3 shareholder, and he was in the finance and  
4 accounting department, so this fell within --  
5 the review of the budget fell within his domain.

6 MR. BERMAN: I see that it's now seven  
7 o'clock, and I wish to honor your request to  
8 break here. I'm going to say that we're  
9 going to adjourn this deposition for now.  
10 We'll reserve the right to recall the  
11 witness if it's appropriate to do so.

12 MS. GUERON: So, that's not our  
13 position. It's been seven hours. You've  
14 had seven hours. It's our position that the  
15 deposition is closed. If it's your view  
16 that you have five more minutes, go ahead  
17 and do it, but, other than that, this  
18 deposition is closed.

19 MR. BERMAN: Okay. Your position is  
20 noted.

21 Does anyone else need to say anything  
22 on the record before we close?

23 (Continued on next page.)

24 o0o

25

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2 MS. COLWIN: I join in the objection.

3 MR. BERMAN: All right. Thank you  
4 everybody.

5 (Whereupon, the examination of this  
6 witness was concluded at 7:02 p.m.)

7 \* \* \* \*

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## A C K N O W L E D G M E N T

3

STATE OF NEW YORK)

4

) ss.:

5

COUNTY OF )

6

I, DONNA COSTA, hereby certify that I

7

have read the transcript of my testimony taken

8

under oath in my deposition of July 12, 2021; that

9

the transcript is a true, complete and correct

10

record of what was asked, answered and said during

11

this deposition, and that the answers on the

12

record as given by me are true and correct.

13

14

15

16

\_\_\_\_\_  
DONNA COSTA

17

Subscribed and sworn to

18

before me this \_\_\_\_\_ day

19

of \_\_\_\_\_, 2021.

20

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22

\_\_\_\_\_  
NOTARY PUBLIC

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## I N D E X

3

EXAMINATION OF

BY

PAGE

4

Donna Costa

Mr. Berman

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5

6

## E X H I B I T S

7

8

PLAINTIFF'S

DESCRIPTION

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9

1, Document Bates stamped DEF 000866, MCHA

10

Organization, dated January 1, 2020,

11

confidential, one page

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12

2, Two-page document bearing Bates stamp

13

DEF 001592 to 001593, confidential

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14

3, Copy of first amended complaint

124

15

4, Two-page document Bates stamped

16

DEF 001590, confidential

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17

5, Two-page document Bates stamped

18

DEF 000821 and DEF 000822, confidential

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19

6, Three-page document Bates stamped

20

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21

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2	REQUESTS FOR PRODUCTION	
3	DESCRIPTION	PAGE
4	Any org charts that were in the care,	
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6	her tenure as general counsel or	
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## C E R T I F I C A T I O N

3

I, BONNIE KREUZBURG, a Notary Public

4

of the State of New York do hereby certify:

5

That the testimony in the within

6

proceeding was held before me at the aforesaid

7

time and place.

8

That said witness was duly sworn

9

before the commencement of the testimony, and that

10

the testimony was taken stenographically by me,

11

then transcribed under my supervisor, and that the

12

within transcript is a true record of the

13

testimony of said witness.

14

I further certify that I am not

15

related to any of the parties to this action by

16

blood or marriage, that I am not interested

17

directly or indirectly in the matter in

18

controversy, nor am I in the employ of any of the

19

counsel.

20

IN WITNESS WHEREOF, I have hereunto

21

set my hand this 22nd day of July, 2021.

22

23

24



25

BONNIE KREUZBURG

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